

EXHIBIT G

ORIGINAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK-----x
VASILIS AFTOUSHIS and CONSTANTIA AFTOUSHIS, :

Plaintiffs, :

Index No.
102479/07 :

-against- :

WONDER WORKS CONSTRUCTION CORP., and
FORTHRIGHT CONSTRUCTION, INC., :

Defendants. :

-----x
FORTHRIGHT CONSTRUCTION, INC., :

Third-Party Plaintiff, :

-against- :

MMG DESIGN, INC., ATY INC., N & C IRONWORKS, :
INC., O.M.I. CONSTRUCTION CO., INC., and :
MONACO CONSTRUCTION CORP., :

Third-Party Defendants. :

-----x
WONDER WORKS CONSTRUCTION CORP., :

Second Third-Party Plaintiff. :

-against- :

MMG DESIGN, INC., ATY INC., N & C IRONWORKS, :
INC., O.M.I. CONSTRUCTION CO., INC., and :
MONACO CONSTRUCTION CORP., :

Second Third-Party Defendants. :

-----x
DATE: May 13, 2008

DEPONENT: Mark Kanevsky

BARRISTER REPORTING SERVICE, INC.

120 Broadway
New York, N.Y. 10271

212-732-8066

EXAMINATION BEFORE TRIAL of the

Defendant/Third-Party Plaintiff, FORTHRIGHT
CONSTRUCTION, INC., by MARK KANEVSKY, taken by
the Plaintiffs, pursuant to Order, held at the
offices of Voute, Lohrfink, Magro & Collins,
LLP, 100 Park Avenue, New York, New York, on May
13, 2008, at 1:00 p.m., before a Notary Public
of the State of New York.

BARRISTER REPORTING SERVICE, INC.

120 Broadway

New York, N.Y. 10271

212-732-8066

1
2 A P P E A R A N C E S :3 LAW OFFICES OF STEVEN NEWMAN
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18 BY: FRANK J. GILBERTI, ESQ.

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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, and in compliance with Rule 221 of the Uniform Rules for the Trial Courts;

THAT the parties recognize the provision of Rule 3115 subdivisions (b), and/or (d). All Objections made at the deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

THAT every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis or error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination, persons in attendance shall not make statements or comments that interfere with the

succinctly and clearly.

THAT failure to object to any question or any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such objection or motion at the time of the trial of this action, and is hereby reserved; and,

Make such objection or motion at the to any question or to move to strike any testimony at this examination shall not be a bar or waiver All rights provided by the C.P.L.R., including the right to object to any question except as to the form, or to move to strike any testimony at this examination, are reserved; in addition, the failure to object to any question or to move to strike testimony at this examination shall not be a bar or waiver to make such motion at the time of the trial of this action, and is hereby reserved; and,

THAT this examination may be signed and sworn to by the witness examined herein before any Notary Public, but failure to do so or to return the original of the examination to the attorney on whose behalf the examination is taken shall not be deemed a waiver of the rights provided by Rules

questioning.

THAT a deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of a court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefore. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

THAT an attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in Section 222.2 of these rules and, in such event, the reason for the communication shall be stated for the record

3116 and 3117 of the CPLR, and shall be controlled thereby; and,

THAT certification and filing of the original of this examination are waived; and,

THAT the questioning attorney shall provide counsel for the witness examined herein with a copy of this examination at no charge.

XXXXX

1
2 MARK KANEVSKY,
3 having been first duly sworn before a
4 Notary Public of the State of New
5 York, was examined and testified as
6 follows:

7
8 EXAMINATION BY

9 MR. NEWMAN:

10 Q. Please state your name for the record.
11 A. Mark Kanevsky.
12 Q. What is your address?
13 A. 2681-A East 14th Street, Brooklyn, New
14 York 11221.
15 Q. Good afternoon, sir. My name is Steve
16 Newman. I represent the Plaintiffs in this
17 case. I'll be asking you a series of
18 questions, and these other lawyers might
19 follow-up if I'm not doing a complete job,
20 but I will try to do that. I will give you a
21 couple of instructions, standard lawyer talk,
22 before we start. All of your responses have
23 to be oral. You can't gesture. You have to
24 say something.
25 Do you understand what I just said to

1 Kanevsky
2 you?
3 A. Yes, I do.
4 Q. If you don't understand what I'm
5 asking you, it's absolutely appropriate and
6 we all want you to say I don't understand.
7 Do you understand what I just said to
8 you?
9 A. Yes.
10 Q. Do not guess and do not speculate.
11 We're all here to get information that you
12 know to be true, and it doesn't help any of
13 us if you're guessing and/or speculating.
14 Do you understand what I just said to
15 you?
16 A. Yes.
17 Q. When I'm asking you a question, please
18 hold off giving an answer until I finish the
19 question. That it makes the court reporter's
20 job easier if you wait to speak after I
21 finish my question.
22 Do you understand?
23 A. Yes, I do.
24 Q. Are you taking any prescription drugs
25 or any kind of drugs or alcohol that would

1 Kanevsky
2 prevent you from answering my questions
3 today?
4 A. No.
5 Q. Have you been deposed before, sir?
6 A. No.
7 Q. Are you currently employed?
8 A. Yes.
9 Q. Where do you work?
10 A. I'm self-employed.
11 Q. How long have you been self-employed?
12 A. More than ten years.
13 Q. Do you have an office that you work
14 out of?
15 A. Yes, I do.
16 Q. Where is the office located?
17 A. 2681 East 14th Street, I believe.
18 Q. That's a commercial space?
19 A. Yes.
20 Q. That's in Brooklyn?
21 A. Yes.
22 Q. How long have you been in that space?
23 A. A few months.
24 Q. Where were you before?
25 A. At McDonald Avenue.

1 Kanevsky
2 Q. Could you give the address, please, if
3 you remember?
4 A. 2685. No. I don't remember the
5 number 2685. McDonald. Corner of Avenue U.
6 Q. How long were you at that office?
7 A. About four years. Four or five I
8 would say.
9 Q. In the office that you're at now do
10 you have any employees that you pay?
11 A. Yes, I do.
12 Q. What are their roles? What do they
13 do?
14 A. They're office employees.
15 Q. How many are there?
16 A. Today?
17 Q. Yes.
18 A. Two.
19 Q. What are their names?
20 A. Jane.
21 Q. What's the last name?
22 A. I don't remember.
23 Q. What's your other employee's name?
24 A. Myself.
25 Q. So, there's not two other employees,

1 Kanevsky
2 there's one other employee besides yourself?
3 A. I would say opposite.
4 Q. It's a simple question, and I want to
5 move the deposition along.
6 Aside from yourself --
7 A. I'm not a president of the company.
8 So --
9 Q. I didn't ask you anything about you
10 being the president of the company or
11 anything about that. All I asked was, aside
12 from yourself, are there any employees in the
13 office space that you occupy that you pay?
14 What is the answer to that question?
15 A. Today only one person, Jane.
16 Q. What does Jane do?
17 A. Secretary.
18 Q. How long has she been your secretary?
19 A. Five years.
20 Q. What are her duties as your secretary?
21 What does she do for you?
22 A. All paperwork.
23 Q. How many hours a week does she work?
24 A. 40 hours.
25 Q. She's a salaried employee of yours?

1 Kanevsky
2 Q. Here's my question. We'll do it this
3 way.
4 In the year 2008 from January to May
5 have you worked as a construction manager
6 anywhere?
7 A. Yes, I do.
8 Q. Where have you worked as a
9 construction manager?
10 A. I do not understand your question.
11 Q. The question is the following.
12 From January 1st of 2008 to May 12th
13 of 2008 have you worked anywhere? Have you
14 been employed anywhere as a construction
15 manager?
16 A. I'm self-employed. How can I be
17 employed?
18 Q. You're self-employed. What does that
19 mean when you say self-employed? Does
20 anybody hire you for work?
21 MR. NEWMAN: I'll do it another
22 way.
23 MR. GILIBERTI: Ask him if he's
24 with Forthright.
25 MR. NEWMAN: I'll do that in a

1 Kanevsky
2 A. Yes.
3 Q. You're self-employed. What is it that
4 you do, sir?
5 A. What do I do?
6 Q. Yes.
7 How do you make a living?
8 A. I'm a construction manager.
9 Q. How long have you been a construction
10 manager?
11 A. More than ten years.
12 Q. In the last year have you been working
13 as a construction manager?
14 A. Yes, I do.
15 Q. Where have you been working in the
16 last year as a construction manager?
17 A. I have a few projects.
18 Q. Where are they?
19 A. All of them in Brooklyn.
20 Q. Can you give me the locations -- this
21 is the last year -- where you have worked as
22 a construction manager?
23 A. Excuse me?
24 Q. In the last year --
25 A. Location?

1 Kanevsky
2 second. I'm trying to understand
3 what's happening.
4 Q. From January of 2008 to May of 2008
5 have you made any money working as a
6 construction manager?
7 A. Yes, I do.
8 Q. Who's paid you from January to May for
9 your work?
10 A. My clients.
11 Q. Who are the clients that have paid you
12 to be a construction manager? From January
13 of 2008 through May of 2008 who has paid you
14 money?
15 A. I prefer to keep the answer private.
16 It's not related to this job.
17 MR. NEWMAN: That's not
18 appropriate. It's not legal. We'll
19 call the judge right away. He doesn't
20 have the right. You know that.
21 MR. SCHOEENE: Explain to me the
22 relevance of this question.
23 MR. NEWMAN: Again, we all know
24 the rules have been clarified.
25 Relevancy is not an objection.

1 Kanevsky
2 MR. SCHOENE: Palpably
3 irrelevant is.
4 MR. NEWMAN: Do you consider
5 this palpably irrelevant when I'm
6 asking him what he's doing?
7 MR. SCHOENE: You're asking him
8 who's paying him.
9 MR. NEWMAN: I'll call the
10 judge.
11 Here's the question. I need it
12 on the record if you're instructing
13 him not to answer.
14 Q. The question is, sir, who has paid you
15 money to be a construction manager? From
16 January of 2008 to May of 2008 who has paid
17 you?
18 MR. NEWMAN: For the record, are
19 you instructing your client not to
20 answer the question?
21 MR. SCHOENE: You want to call
22 the judge? He feels it's an invasion
23 of his privacy to answer that
24 question. I asked you to explain the
25 relevancy of it. You said relevancy

1 Kanevsky
2 In the year 2008 have you been
3 employed by anyone?
4 A. No.
5 Q. In the year 2008 have you made any
6 money working as a construction manager?
7 A. Let me ask a question, please.
8 Clarify for me what means employed and make
9 money.
10 Q. Not a problem.
11 Make money is when you do some work
12 and then the person you've worked for either
13 gives you U.S. currency or they give you a
14 check or money order.
15 Has anyone done that for you in the
16 year 2008?
17 That's what make money means.
18 A. Let me ask you again. What is the
19 difference between being employed and being
20 paid?
21 Q. I'll explain that, but let me ask you
22 a question.
23 A. You can't ask me a question until you
24 explain to me your question.
25 Q. Do you need a translator, Russian

1 Kanevsky
2 is not an objection. I said if it's
3 palpably irrelevant, it is. This
4 seems to me it is palpably irrelevant.
5 Unless you can explain to me the
6 relevancy --
7 MR. NEWMAN: I don't have to.
8 That's as clear as any of the rules.
9 MR. SCHOENE: Now you're abusing
10 the rules.
11 MR. NEWMAN: No problem. It's
12 not a problem.
13 MR. SCHOENE: You're abusing the
14 rules by not explaining to me the
15 relevancy.
16 MR. NEWMAN: Off the record.
17 (Discussion held off the
18 record.)
19 (Brief recess taken.)
20 Q. Sir, what we're going to do is I
21 called the court to get a ruling on this
22 issue. I'm going to move beyond it and see
23 if I can work around this, and then we'll
24 proceed. When the judge is back, then we'll
25 call the judge to see what's up.

1 Kanevsky
2 translator?
3 A. No, I don't.
4 Q. Here's how it works, and then I'll
5 clarify. This is a deposition and I get to
6 ask you questions and then you give answers.
7 If you don't understand my question, you can
8 say I don't understand and I'll rephrase it.
9 MR. NEWMAN: So, let's do it
10 again. Why don't you recite the
11 question, and then we'll see what the
12 gentleman doesn't understand.
13 Whatever my last question is, read
14 that back to him, and let's see where
15 we're at.
16 (Whereupon the record was read
17 back by the reporter.)
18 Q. So, your question to me is, what does
19 the word employed mean?
20 A. You asked me a question, did I make
21 money and was I employed.
22 Q. Yes.
23 A. What's the difference between those
24 two?
25 Q. Making money is what I said a moment

21

Kanevsky

ago. When you work for someone and they pay you for your labor, that's what making money is in the context I'm asking.

Have you worked in the year 2008 as a construction manager where somebody paid you for your labor? That's the question.

A. I don't understand this question.

This question is not related to the job that I do. It's not about my work.

MR. NEWMAN: Off the record.

(Discussion held off the record.)

MR. NEWMAN: First of all, this witness is not answering questions. This is my deposition. He does not seem to have been instructed on what is happening today. He appears to be utterly recalcitrant in answering the simplest question.

Number two, he is, I guess, not been prepped, because rather than responding to my questions or telling me I don't understand the question, he's asking me questions.

23

Kanevsky

me. You came into this deposition in an aggressive manner, very confrontational, and it seems to me you started asking questions at this deposition, which in my opinion were palpably improper, and it's almost like you want to create some kind of controversy and put it in front of a judge, which I don't understand. If the witness does not understand a question that is posed by you -- and I may remind you that you instructed this witness that if he did not understand the question, you invited him -- more than invited him, you encouraged him to bring that to your attention so the question could be put in another form, and now you don't like it that he's doing that.

You can go ahead and ask the question. If he understands the question, he'll give you an answer. If he does not, he will not give you an answer.

27

Kanevsky

Number three, I have been instructed about the tone of my voice, and I don't think there are any rules that prevent me from adopting whatever tone that I deem appropriate if I have a recalcitrant witness.

Now I will change my tone, and ask you, the attorney representing this gentleman, what do you want to do, sir, about this gentleman who refuses to answer the simplest question that I can possibly ask? As an example, he just asked me what does it mean to make money, and I don't know where to go with that, and I need some help from you as to what to do with this gentleman.

MR. SCHOENE: First of all, there are rules of civility, which you have -- that's right. You're about to interrupt me again. Every time I tried to say something when we were off the record, you did not let me say what I wanted to say. You interrupted

24

Kanevsky

MR. NEWMAN: Thank you for the clarification.

Q. I want it on the record. I'm asking you a second time. Is there anything about the English language that I'm speaking to you in that prevents you from answering? Do you have any language problem whatsoever?

A. No.

MR. NEWMAN: We'll proceed.

Q. In the year 2008 have you made any money as a construction manager?

A. Yes, I do.

Q. Who paid you or what work did you do to get paid as a construction manager in the year 2008?

MR. SCHOENE: Objection. That's a compound question. You have two parts in there. I'm not sure which question you're asking.

MR. NEWMAN: No problem.

Q. Who employed you in the year 2008 to work as a construction manager?

A. I'm not going to give you a list of my clients. This is private.

25

1 Kanevsky
 2 MR. SCHOENE: That's what you
 3 said you were going to put on the
 4 shelf and continue with your
 5 deposition.
 6 MR. NEWMAN: That's a different
 7 question.
 8 MR. SCHOENE: That's exactly
 9 what you asked the first time around
 10 when you picked up the phone to call
 11 the judge, and you said you were going
 12 to put it on the shelf and continue
 13 on, and then you went right back to
 14 it.
 15 Q. Sir, are you a principal of Forthright
 16 Construction, Inc.?
 17 A. Yes, I do.
 18 Q. How long have you been a principal of
 19 Forthright Construction, Inc.?
 20 A. About four or five years.
 21 Q. When you say about four or five years,
 22 are you clear in your mind whether it's four
 23 years or five years or you're not sure?
 24 MR. SCHOENE: Objection to the
 25 form. You may answer.

27

1 Kanevsky
 2 What are they?
 3 A. They're related to Quentin Terrace
 4 project.
 5 Q. What job functions are related to
 6 Quentin Terrace project? What do you do?
 7 A. As vice-president I oversee the
 8 project from the very beginning stage. Then
 9 in the construction stage I do interfere with
 10 people who are involved in the design, as the
 11 architects and engineers, and also the
 12 subcontractors who do the actual work.
 13 Q. When you say that you oversaw or
 14 oversee the project on Quentin Road, what
 15 does that involve? What have you done?
 16 A. Physically oversee the project. Be on
 17 the job site, look exactly at what's going on
 18 at the job site, have a report from my
 19 supervisors. Control everything that's going
 20 on at the job site. You can put it in one
 21 word, everything.
 22 Q. When did you start to oversee the
 23 project on Quentin Road?
 24 A. In the very beginning.
 25 Q. Which was when?

26

1 Kanevsky
 2 A. I don't pay attention to this number.
 3 Approximately four or five years.
 4 Q. When you say you are a principal of
 5 Forthright Construction, Inc., what does that
 6 mean?
 7 A. I'm a vice-president.
 8 Q. Have you been a vice-president of
 9 Forthright Construction, Inc. for four or
 10 five years?
 11 A. Yes.
 12 Q. Do you hold any other positions in
 13 Forthright Construction, Inc.?
 14 A. No.
 15 Q. What do you do as a vice-president of
 16 Forthright Construction, Inc.?
 17 A. Everything that I'm suppose to do as a
 18 vice-president.
 19 Q. What is that?
 20 A. Can you clarify your question, please?
 21 Q. What do you do? What is your job as
 22 the vice-president of Forthright
 23 Construction, Inc.?
 24 A. I have too many responsibilities.
 25 Q. Okay.

28

1 Kanevsky
 2 A. 2004.
 3 Q. Now, in 2004 was Forthright
 4 Construction, Inc. the general contractor, a
 5 subcontractor? What was their role for the
 6 construction project at Quentin Road?
 7 A. I would say general contractor.
 8 Q. What was Wonder Works in relation to
 9 Forthright?
 10 A. Wonder Works is a general contractor
 11 on the same job.
 12 Q. So, your testimony is that there were
 13 two general contractors working the job on
 14 Quentin Road; is that correct?
 15 A. You can say so.
 16 MR. NEWMAN: Let's have this
 17 marked as Plaintiff's Exhibit 1.
 18 (Whereupon a photograph was
 19 marked Plaintiff's Exhibit 1, for
 20 identification as of this date.)
 21 Q. Sir, I'm showing you what has been
 22 marked as Plaintiff's 1, and this is a
 23 photograph of a sign. I'm asking you have
 24 you ever seen that sign before?
 25 A. Yes.

29

30

1 Kanevsky

2 Q. When's the first time you saw that

3 sign?

4 A. Always.

5 Q. Have you seen it in the year 2004?

6 A. Yes.

7 Q. Who put up that sign?

8 A. I did.

9 Q. When did you put that sign up? When

10 did you physically put that sign on the site

11 at Quentin Road?

12 A. On the construction fence.

13 Q. You put it on the construction fence?

14 A. I did.

15 Q. You did that in the year 2004?

16 A. I believe so. Around that time.

17 Q. On the sign it says that Wonder Works

18 Construction Corp. is the general contractor,

19 correct?

20 A. Yes. Correct.

21 Q. Then it says contractor is Forthright

22 Construction, Inc., correct?

23 A. Correct.

24 Q. So, who created this sign?

25 A. I did.

1 Kanevsky

2 Q. Where it says contractor, Forthright

3 Construction, Inc., does that mean something

4 other than what you said before? I'm just

5 trying to get clarification. In other words,

6 should that read general contractor,

7 Forthright Construction, Inc., or is that a

8 mistake, or what is this sign about? Because

9 it's slightly different from what you said.

10 I just need clarification.

11 MR. SCHOENE: Objection to form.

12 That's mostly a statement rather than

13 a question.

14 MR. NEWMAN: Let me rephrase it.

15 Q. Was Forthright Construction, Inc. the

16 general contractor on the job at Quentin Road

17 or a contractor on the job?

18 MR. SCHOENE: Objection to form.

19 You said the general contractor. The

20 witness said there might be two

21 general contractors.

22 MR. NEWMAN: Let me change the

23 question.

24 Q. Was Forthright Construction, Inc. a

25 general contractor performing work on Quentin

31

32

1 Kanevsky

2 Road or a contractor performing work on

3 Quentin Road?

4 A. May I ask a question, please?

5 MR. SCHOENE: Are you able to

6 answer the question?

7 THE WITNESS: Not this question.

8 I have to clarify something.

9 Q. What's the question?

10 A. The question is, what is the

11 difference between general contractor and

12 contractor in your opinion?

13 Q. Here's the deal. If you don't

14 understand my question --

15 A. I understand.

16 Q. Here's the deal. You don't get to ask

17 me questions. You're here only for one

18 reason. It's to respond to questions that

19 I'm asking you. The only thing you can do is

20 you can say I don't understand, but you don't

21 get to ask me questions. If you want me to

22 clarify my question, which I think you're

23 asking me to do, I'll be happy to do so.

24 MR. SCHOENE: Madam Reporter,

25 I'd like to know if when the witness

1 Kanevsky

2 said may I ask a question, did Mr.

3 Newman respond to that? Did he say

4 yes or no, or was there a response?

5 (Whereupon the record was read

6 back by the reporter.)

7 MR. SCHOENE: After that lecture

8 that Mr. Newman gave the witness, I

9 think the record will reflect that Mr.

10 Newman invited a question from the

11 witness, and then he goes ahead and

12 tells the witness he's not suppose to

13 ask questions. I think there should

14 be more consistency on the part of Mr.

15 Newman.

16 MR. NEWMAN: You're right. I

17 have been inconsistent.

18 Q. Now I'll try to be more consistent in

19 the way I'm questioning you, sir. I'll ask

20 it this way.

21 There's a sign that I just pointed out

22 to you that's depicted within what's been

23 marked as Plaintiff's 1, and it lists

24 Forthright Construction, Inc. as a

25 contractor.

33

Kanevsky

Now I'll ask you this question.

Is there a difference in your mind between Forthright Construction, Inc. working as a contractor or Forthright Construction, Inc. working as a general contractor on Quentin Road?

A. Yes.

Q. What's the difference?

A. The difference is who is legally holding the permits on the job site and who is doing any work on the job site, all of it or partial work. That's the difference in my understanding.

Q. Well, who held the permits on Quentin Road, Wonder Works or Forthright?

A. Wonder Works.

Q. Does that mean under the definition you're giving me that Wonder Works was the general contractor because they held the permits?

A. You can say so.

Q. It's not me saying so. I'm asking you what you say. I'm not asking about my opinion. I'm asking your opinion.

35

Kanevsky

A. Excuse me?

Q. Did Forthright Construction, Inc. apply for any permits to do construction work on Quentin Road?

A. I don't remember. I think not. I believe not. I believe not.

Q. Is the reason that Forthright Construction, Inc. did not take out any permits because they were not the general contractor on the job?

A. There's no reason. It was just the way the job was set up.

Q. It's your testimony that there are two general contractors that performed work on Quentin Road, Wonder Works Construction Corp. and Forthright Construction, Inc.?

MR. SCHOENE: Objection to the form. You may answer.

A. May I ask a question again?

MR. SCHOENE: He doesn't want you to ask questions.

THE WITNESS: I don't understand.

MR. SCHOENE: Tell him you don't

34

Kanevsky

I'll ask you the question again, sir.

In that you just testified that Wonder Works Construction Corp. held the permits for the job on Quentin Road, does that mean under your definition that Wonder Works was the general contractor doing the work on Quentin Road?

A. Wonder Works has the permits for the new building on Quentin Road, and Wonder Works as the general contractor may have subcontractors or general contractors for the actual work.

MR. NEWMAN: I move to strike the answer as not responsive.

Can you read back the question, please?

(Whereupon the record was read back by the reporter.)

MR. NEWMAN: I will do it another way.

Q. From your testimony you're saying Forthright Construction, Inc. did not take out any permits for the work on Quentin Road? Is that your testimony?

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Kanevsky

understand the question that he's posing. He's made it very clear he doesn't want any questions from you.

MR. NEWMAN: I don't.

MR. SCHOENE: If you don't understand the question, just say you don't understand question.

A. I don't understand the question.

Q. Previously you testified that Wonder Works Construction Corp. and Forthright Construction, Inc. were both performing and working as general contractors doing the work on Quentin Road. Do you remember saying that a couple of minutes ago?

MR. SMAR: Objection. That's not what he said. You said working as general contractors at the construction site. There's really no definition of what general contractor is, and it does call for a legal conclusion to some extent.

Q. What did you do in overseeing the project on Quentin Road?

A. Construction management.

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1 Kanevsky

2 Q. What did that entail? What are the

3 specifics that you did? What are the

4 specifics that you did starting from 2004?

5 A. I already answered this question. I

6 oversee the whole project.

7 Q. What did that entail? What did you

8 do?

9 A. I oversee the whole project. I

10 physically built the building.

11 Q. You physically built the building?

12 A. That's what it means.

13 Q. Take me through that.

14 When you say you physically built the

15 building, were you responsible for doing the

16 excavation?

17 A. Yes, I do.

18 Q. Were you responsible for doing the

19 underpinning?

20 A. Yes, I do.

21 Q. Were you responsible for building --

22 MR. SCHOENE: I'll make an

23 objection to the word responsible.

24 I'm not sure what you mean by that

25 word. I will not direct him not to

39

1 Kanevsky

2 Q. Is it ATTY, Inc.?

3 A. ATTY, three letters, I believe.

4 Q. Who hired ATTY?

5 A. I did.

6 Q. When did you hire them?

7 A. I believe it was the end of 2004.

8 Something like that.

9 Q. What was the process of you hiring

10 them? How did you find them?

11 A. Because they used to work with me on a

12 previous project. I knew him from before.

13 Q. When you said him, was it one person

14 that you dealt with?

15 A. Two.

16 Q. Two people, is that what you just

17 said?

18 A. Two people.

19 Q. What were their names?

20 A. One was Izzy, short for Isaac, and

21 another one was -- I forgot his name.

22 Q. If you don't remember, just say you

23 don't remember. We'll move on.

24 Did you enter into a contract with ATTY

25 Inc.?

1 Kanevsky

2 answer, but I object to form as to

3 what responsible means.

4 MR. NEWMAN: Okay.

5 Q. Let me ask you this.

6 What did you do in terms of excavating

7 the ground adjacent to 97 Quentin Road?

8 A. I already told you. I already

9 explained. I physically oversee the whole

10 project on the job site. If somebody did the

11 actual work, I was there to check and make

12 sure the job was done accurately.

13 Q. When it came to excavation of the

14 ground adjacent to 97 Quentin Road, who did

15 you oversee?

16 I'll ask it again.

17 Was there a company or an individual

18 that excavated the ground next to 97 Quentin

19 Road?

20 A. Everybody who used to be on the

21 project was under my supervision.

22 MR. SCHOENE: He wants to know

23 who did the excavation.

24 Q. Who did the excavation?

25 A. ATTY.

40

1 Kanevsky

2 A. Yes, I did.

3 Q. Do you recall what did you contract

4 with ATTY Inc. to do at Quentin Road?

5 A. Original contract was started from

6 excavation and foundation. We also extend

7 this contract to underpinning and shoring.

8 Q. When did ATTY Inc. begin to work on the

9 project? When I'm talking about the project,

10 I'm talking about the work being performed

11 adjacent to 97 Quentin Road.

12 A. I believe it was the end of 2004. I'm

13 not sure.

14 Q. Before ATTY Inc. began to perform work

15 somewhere around the end of 2004, was there

16 any other work that was performed at the site

17 adjacent to 97 Quentin Road?

18 A. I don't think so.

19 MR. SCHOENE: Do you mean by

20 other companies before that?

21 MR. NEWMAN: No. Just any work.

22 MR. SCHOENE: By ATTY you said.

23 MR. NEWMAN: No. I will clarify

24 now.

25 MR. SCHOENE: I think the answer

41

1 Kanevsky
 2 will be different depending on the
 3 question.
 4 MR. NEWMAN: I think Counsel is
 5 right, that I'm not being clear
 6 enough.
 7 Q. I'm simply asking, was the first work
 8 done adjacent to 97 Quentin Road excavation
 9 work?
 10 A. No.
 11 Q. What was the very first work that was
 12 done adjacent to 97 Quentin Road?
 13 A. Demolition.
 14 Q. Fair enough.
 15 Who performed the demolition work?
 16 A. MMG.
 17 Q. MMG Design?
 18 A. MMG Design.
 19 Q. Who contracted with them?
 20 A. I did.
 21 Q. Did you literally enter into a written
 22 contract with them, them being MMG Design,
 23 Inc.?
 24 A. Yes.
 25 Q. When was that?

42

1 Kanevsky
 2 was the planning or the architectural work
 3 that had to be done? Did you hire an
 4 architect?
 5 A. No.
 6 Q. Did anybody hire an architect?
 7 A. Yes.
 8 Q. Who?
 9 A. Wonder Works.
 10 Q. Wonder Works.
 11 Do you know when Wonder Works hired an
 12 architect?
 13 A. When?
 14 Q. When?
 15 A. No, I don't.
 16 Q. Do you know who the architect was for
 17 the project?
 18 A. Yes.
 19 Q. Who?
 20 A. Karl Fischer.
 21 Q. Was he the only architect that worked
 22 on the job?
 23 A. Architect, yes.
 24 Q. Any professional engineers that worked
 25 on the job?

12

1 Kanevsky
 2 A. We contracted with them for the
 3 demolition.
 4 Q. My question is, sir, when did you
 5 enter into a contract with --
 6 A. I don't remember.
 7 Q. Let me get the question out.
 8 When did you contract with MMG Design,
 9 Inc.?
 10 A. I don't remember the date. I believe
 11 it was the beginning of 2004. Probably
 12 February.
 13 Q. Was that the first work that needed to
 14 be done on the site adjacent to 97 Quentin
 15 Road?
 16 A. Physically, yes.
 17 Q. How long did it take to do the
 18 demolition work?
 19 A. I don't remember. A few months. A
 20 month or two.
 21 Q. Any problems in doing the demolition
 22 work?
 23 A. No.
 24 Q. You just said a moment ago that was
 25 the first physical work that was done. What

13

1 Kanevsky
 2 A. Yes.
 3 Q. What were those firms or that firm?
 4 A. I have a list of them. I don't
 5 remember them.
 6 Q. Do you remember any of them?
 7 A. The engineer on the job was -- I'd
 8 have to look in my records.
 9 Q. If you don't recall, that's not a
 10 problem. Just say I don't remember, and
 11 we'll move on.
 12 Is it fair to say there was more than
 13 one professional engineer who worked on the
 14 job?
 15 A. Yes.
 16 Q. Can you tell me about how many
 17 professional engineers worked on the job?
 18 MR. SCHOENE: I need
 19 clarification. When you say
 20 professional engineers, are you
 21 talking about different entities or
 22 professional engineers that work for
 23 one concern?
 24 Q. Different engineering firms, was there
 25 more than one?

45

1 Kanevsky

2 A. More than one.

3 Q. What was the reason why there was more

4 than one engineering firm?

5 A. This is standard procedure. They're

6 responsible for different parts of the

7 project.

8 Q. What different parts of the project

9 required different engineers?

10 A. Structural, mechanical, foundation,

11 electrical. Different engineers work on the

12 project.

13 Q. Is it your testimony that there were

14 different engineering firms that took care of

15 the different categories that you just

16 referred to?

17 A. Yes.

18 Q. Was there a professional engineering

19 firm for the excavation?

20 A. For the underpinning and the shoring.

21 Q. Do you recall who that engineering

22 firm was?

23 A. It's an engineering firm in New

24 Jersey. The first name is Aislem.

25 Q. Did you have any interaction with that

47

1 Kanevsky

2 A. I believe so.

3 Q. Take a minute. We'll do it quickly,

4 and just diagram 97 Quentin Road anyway you

5 want to do it, but just orient us.

6 A. This is our job site. This is your

7 building. Right here we used to have a

8 foundation. In order to demolish it -- that

9 property had a garage or something. It was

10 very difficult to see. So, we left that

11 piece of the foundation wall.

12 Q. All right. I understand.

13 A. Then we changed the design of our

14 building. Our wall and the new wall went

15 this way. That was the main reason why we

16 had to interface with that engineer.

17 Q. Sir, I'll ask it this way.

18 Were there any issues or problems

19 having to do with the underpinning or shoring

20 or excavation in the area bordering the

21 building that was at 97 Quentin Road? Any

22 issues?

23 A. No issues. No problem. Just standard

24 underpinning work.

25 Q. Did you see the underpinning being

46

1 Kanevsky

2 engineering firm, the one that you just

3 testified to that was in charge of the

4 underpinning?

5 A. Yes, I do.

6 Q. What was the nature of your

7 interaction with that engineering firm?

8 A. Explain to him my problem on the job

9 site which was not in the original project.

10 Q. Tell me what the problem was on the

11 job that was not in the original project.

12 A. We have the foundation work that was

13 supposed to be demolished. It's on another

14 side of the building, of your building. It's

15 not related to your side, which we decide to

16 keep in the ground. So, we need to support

17 that foundation. That's why we did special

18 project for the shoring of that part of the

19 wall.

20 Q. If I give you a piece of paper, can

21 you diagram what that is?

22 Is it fair to say, sir, that really

23 has nothing to do with 97 Quentin Road?

24 A. I believe so.

25 Q. Nothing to do with it?

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1 Kanevsky

2 constructed?

3 A. Sure.

4 Q. What company did the underpinning?

5 A. ATY.

6 Q. How long did it take for ATY to do the

7 underpinning?

8 A. I don't remember. It took a few

9 months.

10 MR. SCHOENE: May I just

11 interject?

12 Was there more than one company

13 that did underpinning?

14 THE WITNESS: Yes. We started

15 with Monaco. They worked with us for

16 two or three days, and that's it.

17 They didn't work anymore over there.

18 MR. NEWMAN: Let's mark the

19 diagram as Plaintiff's Exhibit 2.

20 (Whereupon a diagram drawn by

21 Mr. Kanevsky was marked Plaintiff's

22 Exhibit 2, for identification as of

23 this date.)

24 Q. Are you familiar with a company named

25 Monaco Construction Corp.?

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1 Kanevsky
 2 A. Yes, I do.
 3 Q. Did you hire them to do any work on
 4 the land adjacent to 97 Quentin Road?
 5 A. I did not.
 6 Q. Who hired them?
 7 A. MMG Design.
 8 Q. What's the name of the company that
 9 did the initial excavation work on the land
 10 adjacent to 97 Quentin Road?
 11 A. ATY.
 12 Q. Did Monaco Construction Corp. do
 13 excavation work?
 14 MR. GILIBERTI: Objection to
 15 form.
 16 A. Never.
 17 Q. Never.
 18 Were they hired to do excavation?
 19 A. We have a contract with them, MMG, and
 20 they hired Monaco.
 21 Q. What was your contract with MMG Design
 22 for?
 23 A. Excavation.
 24 Q. Did you hire MMG Design to do
 25 excavation prior to hiring ATY Inc. to do

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1 Kanevsky
 2 excavation work?
 3 A. Say it again, please.
 4 Q. The reason that Monaco Construction
 5 Corp. never performed any of the excavation
 6 work, was it because they got into some sort
 7 of dispute with MMG Design?
 8 MR. GILIBERTI: Objection.
 9 MR. SCHOENE: Are you aware of
 10 any dispute that occurred between MMG
 11 Design and Monaco? Yes or no?
 12 THE WITNESS: I heard that
 13 Monaco didn't work for MMG Design
 14 anymore. So, they left.
 15 Q. Do you know what the problem was?
 16 What the dispute was?
 17 A. I don't know.
 18 Q. We'll move on.
 19 After Monaco Construction Corp. was no
 20 longer employed by MMG Design, is that when
 21 you contracted with ATY Inc. to do excavation
 22 work?
 23 A. Yes.
 24 Q. Were you there on-site everyday that
 25 ATY did the excavation and the underpinning

50

1 Kanevsky
 2 excavation?
 3 A. Yes, I do.
 4 Q. Did you personally recruit or contract
 5 with MMG Design to do the work adjacent to 97
 6 Quentin Road?
 7 A. Yes, I do.
 8 Q. Is it fair to say that MMG then
 9 subcontracted out to Monaco Construction
 10 Corp. to do the actual excavation?
 11 MR. GILIBERTI: Objection.
 12 A. Yes.
 13 Q. Was there a problem in Monaco
 14 Construction Corp. doing the excavation?
 15 MR. GILIBERTI: Objection.
 16 A. I already said Monaco never did
 17 excavation.
 18 Q. Why did they not do excavation?
 19 A. Because they didn't have -- how you
 20 say it? One second. They did not agree
 21 enough between MMG Design and Monaco.
 22 Q. Is it fair to say some dispute arose
 23 between the sub, Monaco Construction Corp.,
 24 and MMG Design, Inc. before Monaco
 25 Construction Corp. could begin their

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1 Kanevsky
 2 and the foundation work?
 3 A. Yes.
 4 Q. Did I get that right, that the first
 5 thing that ATY Inc. did was excavation of the
 6 site?
 7 A. No.
 8 Q. What's the first thing that ATY Inc.
 9 did for the project?
 10 A. It's a standard procedure.
 11 Underpinning.
 12 Q. Before they did the underpinning, did
 13 they have to excavate the ground adjacent to
 14 97 Quentin Road?
 15 A. No. They can't.
 16 Q. So, the very first thing that ATY Inc.
 17 did on the project was underpinning?
 18 A. Yes.
 19 Q. Did you observe the underpinning?
 20 A. Sure.
 21 Q. Tell me what you observed. What did
 22 ATY Inc. do to underpin?
 23 A. It's a difficult question.
 24 Q. I will break it down for you.
 25 Where did the ATY Inc. underpinning

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1 Kanevsky
 2 take place on the site? Could you point it
 3 out on the diagram that you drew earlier?
 4 A. Sure.
 5 MR. SCHOENE: That's two
 6 questions. Are you withdrawing the
 7 first question and asking him to point
 8 it out on the diagram?
 9 MR. NEWMAN: Yes.
 10 Q. The question is, with respect to what
 11 we've marked as Plaintiff's 2, where did ATY
 12 Inc. perform underpinning?
 13 A. Right along here.
 14 Q. Could you just write the word
 15 underpinning so we know?
 16 Okay.
 17 MR. SCHOENE: Write it over here
 18 too so there's no confusion.
 19 Q. What is underpinning?
 20 A. What is underpinning? If you open the
 21 drawings to get approval for this project,
 22 you'll know exactly what underpinning is.
 23 It's engineering terminology.
 24 Q. Let me ask you a question, sir.
 25 What's your educational background?

55

1 Kanevsky
 2 A. The same one.
 3 Q. What year?
 4 A. I don't remember the year. About 25
 5 years ago.
 6 Q. When did you come to the United
 7 States?
 8 A. About 18 years ago.
 9 Q. Since coming to the United States did
 10 you go to any educational institutions?
 11 A. No.
 12 Q. Do you have any professional licenses
 13 in the United States of any type?
 14 A. Yes, I do.
 15 Q. What are they?
 16 A. New York City home improvement
 17 license.
 18 Q. That's up to date?
 19 A. Yes.
 20 Q. Any other licenses in the United
 21 States?
 22 A. Driver's license.
 23 Q. Any others?
 24 A. No.
 25 Q. So, you have a driver's license and a

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1 Kanevsky
 2 A. I'm a civil engineer.
 3 Q. Are you a licensed --
 4 A. No.
 5 Q. Let me get the question out.
 6 Are you a licensed civil engineer in
 7 the United States?
 8 A. No.
 9 Q. What's the highest level of education
 10 that you attained?
 11 A. Where?
 12 Q. Anywhere.
 13 A. Ukraine. Bachelor's degree.
 14 Q. Bachelor's degree in what?
 15 A. Bachelor's degree in civil
 16 engineering, and a Master's degree in roads
 17 and bridges.
 18 Q. Where did you get your Bachelor's
 19 degree, what institution in the Ukraine?
 20 A. By the way, it's not in the Ukraine.
 21 It's Russia. City is Voronge.
 22 Q. When did you get that degree?
 23 A. About 25 years ago.
 24 Q. What institution granted you your
 25 Master's degree?

1 Kanevsky
 2 home improvement license?
 3 A. Yes.
 4 Q. Now, I want to go back, and I don't
 5 want to look at the plans. I just want you
 6 as a person who was trained in Russia and has
 7 degrees to explain to me what is
 8 underpinning. What is involved in doing
 9 underpinning?
 10 A. Underpinning is a very, I would say,
 11 complicated process. To explain exactly
 12 what's involved in this I'm going to need
 13 much more time than we plan to spend here.
 14 If you want, I'll continue.
 15 Q. Let me answer your question. We have
 16 literally days, if necessary, to spend here
 17 for me to get the information that I need
 18 from you. So, I want you to spend as much
 19 time as you need, take all the time that you
 20 need, to explain to me exactly what
 21 underpinning is.
 22 A. Not a problem.
 23 Q. Go ahead.
 24 A. Underpinning is a process to reinforce
 25 and support the foundation of any existing

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Kanevsky

building. In order to be able to do the excavation, the nearest property -- this process involve partial -- okay -- partial support in a certain type of existing foundation. This process moves along the property as far as the previous part is done. Each part usually takes two, three, four days. This process involves partial of digging under the foundation, filling those dry packing of the gap between existing foundation and new underpinning. That is what underpinning means.

Q. Did you observe all of what you just described occur in the underpinning that was performed adjacent to 97 Quentin Road?

A. Yes.

Q. Did you observe it literally everyday that the underpinning was performed?

A. Yes.

Q. Did you take any pictures?

A. Yes.

Q. Where are those pictures?

A. Oh, we have a lot of them.

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Kanevsky

A. Either way. Some of them in the computer. Some of them on paper.

Q. When you say paper, you mean actual photographs?

A. Sure.

Q. Those are color photographs?

A. Some of them.

Q. About how many color photographs of the underpinning do you possess?

A. I don't remember.

Q. The color photographs of the underpinning that you possess, are those taken from the beginning that the underpinning was performed until the end that the underpinning was performed; in other words, showing the whole process?

A. Yes.

Q. Do any of those photographs show that there is any problem or problems in doing the process of creating the underpinning?

A. Can you rephrase the question?

Q. Yes, I will. Let me say it a different way.

In that you were on the job everyday

58

Kanevsky

Q. When you say a lot, do you have 10, 100, something in the middle?

A. I would say more than 100.

Q. Are they color or black and white?

A. They're color.

Q. Who took them?

A. My workers, myself, Wonder Works. The owner's representative also. We have a lot of pictures.

Q. Are the pictures dated?

A. I believe most of them.

Q. What kind of camera was used when you took the pictures? Was it a digital, SLR or something else?

A. Some was done by digital. Some of the pictures were done by Polaroids.

Q. The pictures that you took or the workers that you were working with took, where are they now? Where are they stored?

A. Some of them are stored in Wonder Works. Some of them in my office.

Q. When you say they're stored, are they on the electronic flash chips or are they actual color photographs of the underpinning?

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Kanevsky

were there any problems in the underpinning being performed?

A. I don't think so.

Q. When you say you don't think so, does that mean you're not sure or you know for a fact that there were not any problems?

A. I don't know what you mean by problems.

Q. I'll explain.

Did you observe any cracks that formed that were created on the structure 97 Quentin Road as a result of the underpinning being done?

A. No.

Q. Were there any preexisting cracks on the structure at 97 Quentin Road?

A. Yes.

Q. Where?

A. All over.

Q. Where?

A. All over on the wall.

Q. When you say the wall, are you referring to the structure of 97 Quentin Road above ground, below ground or something else?

1 Kanevsky
2 A. If you're able to show me pictures --
3 Q. I'll show you pictures later.
4 A. Can you rephrase what you mean by
5 above ground or underground?
6 Q. You want me to explain what the
7 difference is between above ground and
8 underground?
9 A. Yes.
10 Q. I will explain it to you. Above grade
11 or below grade.
12 A. You need to specify.
13 Q. I'll do my best so you can understand
14 exactly what I'm asking for. Let's do it
15 this way.
16 Prior to any excavation beginning,
17 prior to demolition, did you notice any
18 cracks on the outside of 97 Quentin Road?
19 A. Yes.
20 Q. Where were they?
21 A. Along this wall. All along the wall.
22 All over.
23 Q. So, I want you to diagram, if you
24 don't mind, cracks that you saw on the
25 exterior of 97 Quentin Road prior to

1 Kanevsky
2 brick veneer, you'll see the previous cracks.
3 Q. Okay.
4 A. Even if they were filled with the
5 pointing material, even now you're able to
6 see all previous cracks which used to be
7 fixed by pointing.
8 Q. Okay. So, let's do it this way.
9 Prior to demolition did you inspect 97
10 Quentin Road?
11 MR. SCHOENE: When you say
12 inspect, I'd like to know what you
13 mean by that. Do you mean just look
14 at casually, or how do you use the
15 word inspect?
16 Q. Prior to the demolition did you walk
17 around the perimeter of 97 Quentin Road and
18 inspect the exterior of the building located
19 at 97 Quentin Road?
20 A. Yes, I do. This is standard
21 procedure, to look at all the properties
22 around.
23 Q. When did you do that?
24 A. When?
25 Q. Yes

1 Kanevsky
2 demolition beginning.
3 A. You asked me a previous question
4 before demolition and excavation. I answered
5 yes, I do. I saw the cracks. Now you're
6 asking for prior to demolition. No one is
7 able to see anything prior to demolition.
8 Q. That's because there was a structure
9 next to both walls of 97 Quentin Road; is
10 that right?
11 A. That's correct.
12 Q. So, you couldn't see any cracks on the
13 exterior of the two walls that eventually
14 were exposed because there were buildings
15 adjacent; is that correct?
16 A. That's correct.
17 Q. What I'm asking is, on the two walls
18 of 97 Quentin where there were not structures
19 adjacent to it, did you notice prior to
20 demolition if there were any cracks on the
21 exterior of those walls?
22 A. On those walls?
23 Q. Yes.
24 A. Those walls had pointing on the brick
25 veneer. So, even now if you look at that

1 Kanevsky
2 A. Daily basis.
3 Q. No.
4 The question was, when was the first
5 time prior to demolition that you walked
6 around 97 Quentin Road and inspected the
7 exterior of 97 Quentin Road? Prior to
8 demolition when is the first time you did
9 that?
10 A. I would say in the first few days when
11 the demolition starts. It means when the
12 demolition permit already exists, but the
13 actual work was not done yet.
14 Q. That's the first time you inspected,
15 looked at the facade of 97 Quentin Road?
16 A. Yes.
17 Q. Did you take any photographs in that
18 first inspection?
19 A. On that one, not me, but Wonder Works
20 did. I would be able to pull those
21 photographs. They exist.
22 Q. When you were inspecting the exterior
23 of 97 Quentin Road for the first time, was
24 there a representative from Wonder Works that
25 inspected the outside of 97 Quentin Road as

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Kanevsky

building. In order to be able to do the excavation, the nearest property -- this process involve partial -- okay -- partial support in a certain type of existing foundation. This process moves along the property as far as the previous part is done. Each part usually takes two, three, four days. This process involves partial of digging under the foundation, filling those digging holes with reinforced concrete and dry packing of the gap between existing foundation and new underpinning. That is what underpinning means.

Q. Did you observe all of what you just described occur in the underpinning that was performed adjacent to 97 Quentin Road?

A. Yes.

Q. Did you observe it literally everyday that the underpinning was performed?

A. Yes.

Q. Did you take any pictures?

A. Yes.

Q. Where are those pictures?

A. Oh, we have a lot of them.

59

Kanevsky

A. Either way. Some of them in the computer. Some of them on paper.

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A. Yes.

Q. Do any of those photographs show that there is any problem or problems in doing the process of creating the underpinning?

A. Can you rephrase the question?

Q. Yes, I will. Let me say it a different way.

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58

Kanevsky

Q. When you say a lot, do you have 10, 100, something in the middle?

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Q. Are they color or black and white?

A. They're color.

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A. I believe most of them.

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A. Some was done by digital. Some of the pictures were done by Polaroids.

Q. The pictures that you took or the workers that you were working with took, where are they now? Where are they stored?

A. Some of them are stored in Wonder Works. Some of them in my office.

Q. When you say they're stored, are they on the electronic flash chips or are they actual color photographs of the underpinning?

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were there any problems in the underpinning being performed?

A. I don't think so.

Q. When you say you don't think so, does that mean you're not sure or you know for a fact that there were not any problems?

A. I don't know what you mean by problems.

Q. I'll explain.

Did you observe any cracks that formed that were created on the structure 97 Quentin Road as a result of the underpinning being done?

A. No.

Q. Were there any preexisting cracks on the structure at 97 Quentin Road?

A. Yes.

Q. Where?

A. All over.

Q. Where?

A. All over on the wall.

Q. When you say the wall, are you referring to the structure of 97 Quentin Road above ground, below ground or something else?

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1 Kanevsky

2 A. If you're able to show me pictures --

3 Q. I'll show you pictures later.

4 A. Can you rephrase what you mean by

5 above ground or underground?

6 Q. You want me to explain what the

7 difference is between above ground and

8 underground?

9 A. Yes.

10 Q. I will explain it to you. Above grade

11 or below grade.

12 A. You need to specify.

13 Q. I'll do my best so you can understand

14 exactly what I'm asking for. Let's do it

15 this way.

16 Prior to any excavation beginning,

17 prior to demolition, did you notice any

18 cracks on the outside of 97 Quentin Road?

19 A. Yes.

20 Q. Where were they?

21 A. Along this wall. All along the wall.

22 All over.

23 Q. So, I want you to diagram, if you

24 don't mind, cracks that you saw on the

25 exterior of 97 Quentin Road prior to

1 Kanevsky

2 demolition beginning.

3 A. You asked me a previous question

4 before demolition and excavation. I answered

5 yes, I do. I saw the cracks. Now you're

6 asking for prior to demolition. No one is

7 able to see anything prior to demolition.

8 Q. That's because there was a structure

9 next to both walls of 97 Quentin Road; is

10 that right?

11 A. That's correct.

12 Q. So, you couldn't see any cracks on the

13 exterior of the two walls that eventually

14 were exposed because there were buildings

15 adjacent; is that correct?

16 A. That's correct.

17 Q. What I'm asking is, on the two walls

18 of 97 Quentin where there were not structures

19 adjacent to it, did you notice prior to

20 demolition if there were any cracks on the

21 exterior of those walls?

22 A. On those walls?

23 Q. Yes.

24 A. Those walls had pointing on the brick

25 veneer. So, even now if you look at that

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1 Kanevsky

2 brick veneer, you'll see the previous cracks.

3 Q. Okay.

4 A. Even if they were filled with the

5 pointing material, even now you're able to

6 see all previous cracks which used to be

7 fixed by pointing.

8 Q. Okay. So, let's do it this way.

9 Prior to demolition did you inspect 97

10 Quentin Road?

11 MR. SCHOENE: When you say

12 inspect, I'd like to know what you

13 mean by that. Do you mean just look

14 at casually, or how do you use the

15 word inspect?

16 Q. Prior to the demolition did you walk

17 around the perimeter of 97 Quentin Road and

18 inspect the exterior of the building located

19 at 97 Quentin Road?

20 A. Yes, I do. This is standard

21 procedure, to look at all the properties

22 around.

23 Q. When did you do that?

24 A. When?

25 Q. Yes.

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1 Kanevsky

2 A. Daily basis.

3 Q. No.

4 The question was, when was the first

5 time prior to demolition that you walked

6 around 97 Quentin Road and inspected the

7 exterior of 97 Quentin Road? Prior to

8 demolition when is the first time you did

9 that?

10 A. I would say in the first few days when

11 the demolition starts. It means when the

12 demolition permit already exists, but the

13 actual work was not done yet.

14 Q. That's the first time you inspected,

15 looked at the facade of 97 Quentin Road?

16 A. Yes.

17 Q. Did you take any photographs in that

18 first inspection?

19 A. On that one, not me, but Wonder Works

20 did. I would be able to pull those

21 photographs. They exist.

22 Q. When you were inspecting the exterior

23 of 97 Quentin Road for the first time, was

24 there a representative from Wonder Works that

25 inspected the outside of 97 Quentin Road as

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well?

MR. SMAR: Objection.

Q. Was there anyone with you when you inspected 97 Quentin Road for the first time?

A. I don't remember, but one of the representatives of Wonder Works was there. So, we inspected on a daily basis.

Q. I'm not asking you about on a daily basis. I'm asking you about the first time you inspected --

A. I don't remember, sir.

Q. Let me get the question out.

The first time you inspected 97 Quentin Road did you inspect the interior of the building 97 Quentin Road?

A. Only whatever was visible.

Q. Let me be clear.

Sir, were you dealing with anyone in particular on a regular basis who was employed by Wonder Works when overseeing the project?

A. Yes, I do.

Q. Who were you dealing with at Wonder Works?

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as an owner's rep to oversee the construction?

A. He also oversee the construction.

Q. Did he do anything other than oversee the construction?

A. I don't know what you mean by other.

Q. Aside from supervising and overseeing the construction, did he have any other role on the project? Did he do anything else professionally?

A. For example?

Q. I don't know. I'm asking you.

Did he do the construction?

A. Did he do the construction?

Q. Yes.

A. No.

Q. Any other representatives from Wonder Works that you interacted with?

A. Yes. Later on it was Anthony Galu.

Q. What did Anthony Galu do? Same thing?

A. Same thing.

Q. Anybody else from Wonder Works?

A. I would say no.

Q. You said you had the same role as

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A. During this project a few people was on this job from Wonder Works.

Q. Who were they?

A. In the beginning it was Gabriel.

Q. I'm going to interrupt you.

Is Gabriel a first name or second name?

A. First name.

Q. Do you remember the second name?

MR. SMAR: Off the record.

(Discussion held off the record.)

A. Cozen.

Q. What did Gabriel Cozen do?

A. Owner's representative. He's like a double check.

Q. Who else?

A. Jeff Koifman.

Q. His role, was it different from the other gentleman from Wonder Works? Was Jeff functioning as an owner's rep, a double check as to what was going on?

A. Yes.

Q. Did he do anything else other than act

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these fellows from Wonder Works, owner's rep. Is that what your role was? Were you project engineer? What was your title at the project? I'm still not clear.

MR. SCHOENE: Objection to form.

You can answer, if you can.

Q. What was your title on the project?

MR. SCHOENE: Note my objection.

A. I don't understand what you mean by this question.

Q. Did you have an official title? What was your role in --

MR. SCHOENE: That's two questions.

MR. NEWMAN: I'll do it this way.

Q. Did you have any title designation in overseeing the work of the construction adjacent to 97 Quentin Road?

A. I don't understand the question.

Q. Were you called the construction manager for the project?

A. I'm the vice-president of the company who does actual work on this particular job

Kanevsky

site.

Q. In doing the work was there any title that was given to you? If somebody said I want to see the construction manager, would that be you? Did you have a title?

A. I have to do everything.

Q. I'm just asking. If the answer is no, the answer is no. No problem.

A. Okay.

Q. Is it fair to say you supervised the underpinning?

A. Yes.

Q. Did you supervise the excavation?

A. Yes.

Q. Did you supervise the construction of the foundation?

A. Yes.

Q. You testified earlier in describing underpinning that one of the components of the underpinning is dry packing.

A. Yes.

Q. Describe to me what dry packing is.

A. Dry packing is a material which is not as a regular concrete shrinks. So, after the

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concrete is poured in the hole in the ground and shrinks, the dry pack fills the gap between new concrete, which is underpinning, and the old building foundation in order to properly support it.

Q. Typically what is dry packing made of? What is the material used to do dry packing?

A. There's a special nonshrink grout used for dry packing.

Q. Did you observe the dry packing that was performed for the project?

Again, when I'm saying project, just so we all know, it's the project adjacent to 97 Quentin Road.

A. Yes, I do.

Q. Were there any problems that you observed with the application of the dry packing?

A. No.

Q. Did you take photographs of the dry packing?

A. Yes.

Q. Do you have those photographs in your office?

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A. Yes, and here too.

Q. Here too? Okay.

The photographs, did you bring them with you?

A. No. He have them.

MR. SCHOENE: I have them. I exchanged them.

Q. Are those photographs dated of the dry packing?

A. I don't remember.

Q. Were there any problems that you saw of any type in doing the underpinning, in the underpinning being performed in the project adjacent to 97 Quentin Road, and when you were observing it everyday, did you ever observe any problems whatsoever in the construction of the underpinning?

MR. SCHOENE: Objection. You already asked if there was a problem with the application, and I think he said no. Is this somehow different?

MR. NEWMAN: I will move on.

Q. Were there any problems that you observed with regard to ATY Inc. performing

Kanevsky

its work? In other words, did everything go exactly as it was supposed to when observing the work performed by ATY Inc.?

A. My job is to catch the problem before it becomes dangerous. If there's no problems on the job, nobody is going to need me. Definitely I see the problem everyday, and I fix it before it needs to be fixed.

Q. So, you did see problems?

A. Correct.

Q. Tell me about the problems that you fixed when it came to the underpinning.

A. The problems?

Q. Yes.

A. Tons of them.

Q. Tons of them?

A. Tons of them.

Q. What were they? Tell me.

A. For example, one day I get a delivery of the dry pack, and the delivery was loaded from the supplier in the rain. It was bad weather. I didn't accept it.

Q. So, if I understand what you're saying, because you observed it you prevented

Kanevsky

a problem with the dry pack.

I want you to tell me every problem that you observed that you solved before it became a problem or bigger problem, and I'm just limiting it to underpinning.

A. It's so many years ago. How could I remember? For me it's not a problem. It's just my work to prevent a problem. How should I remember all the small stuff?

Q. All I'm asking you to do is follow my instructions that I gave you in the beginning of this line of questioning, which is if you don't remember something, just tell us you don't remember. That's fine.

You just testified that you remember that when it came to underpinning, there was a potential problem in getting faulty dry pack material. If you recall, were there any other problems that you observed when it came to underpinning?

A. I'll say there were no major problems that I should remember at that site.

Everything was finally done correctly.

Q. When you say finally done correctly,

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Q. When you say no major ones for me --

A. No major problems on the job for me.

Q. I understand you just described for me what your role was on the job.

Besides for the one thing that you pointed out for me, that there was a bad delivery of not proper quality dry pack --

A. I didn't say not proper quality.

Q. Dry pack that was affected by the rain.

A. I didn't say that.

Q. What did you say, sir?

A. I said the dry pack was loaded under the rain, and I didn't take a chance to check if it was good or bad. I simply replaced it.

Q. I'm glad you're being precise, because sometimes I'm not as precise as I'd like to be.

If you can't remember, just tell me you can't remember and we'll move on.

Were there any other issues, problems that you recall having to do with the construction of the underpinning?

A. We probably have different

Kanevsky

were there things that you had to correct when it came to underpinning?

A. Tons of things.

Q. Tell me the things you had to correct. Tell me.

A. I don't remember the small stuff. I told you there were no major problems.

Q. You said you had to correct everything, to use your words a second ago. Tell me what you had to correct when it came to underpinning.

A. There's a standard procedure to do any work, and any workers, subcontractors or others, do not always know by the book how it's supposed to be done, and my job is to correct them. If they use the wrong shovel to dig the ground, I have to make sure this is the right shovel. If they have to use the plywood to support something with the wood, I have to see if this is the right size of the wood and they do the right things deep enough to perform the job. So, my job is to correct every problem at every second on the job. No major ones for me.

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understandings of the word problem.

Q. Do you want me to define problem for you?

A. Yes.

Q. Problem would be when you in your role as the supervisor of the underpinning saw something about to be done in the construction of the underpinning which was not appropriate or proper from your perspective as the guy who is overseeing the underpinning. That's what I mean.

A. Okay. I understand your question.

Q. Good.

A. I would say I had the chance to prevent any problems before they even started.

Q. I understand what you're saying.

A. So, there is no problem done on the job. Nobody did a mistake.

Q. Nobody did a mistake?

A. Nobody.

Q. Let me ask you this.

So, the job went perfectly in all aspects from the demolition to the

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1 Kanevsky
 2 construction? Everything was perfect?
 3 A. The building is perfect. It's still
 4 standing. It did not come down.
 5 Q. From when the job first began -- we'll
 6 go back to the underpinning in a moment --
 7 how long was it to take from the demolition
 8 to the completion of the building? How long
 9 was that?
 10 A. Four years.
 11 Q. Four years?
 12 A. About.
 13 Q. In your educational background and
 14 your experience working as a construction
 15 manager in the United States, is that a
 16 normal amount of time to build a building the
 17 size of the building adjacent to 97 Quentin
 18 Road?
 19 A. There is no standard on it.
 20 Q. Are there documents that show that the
 21 plan was to take four years to construct the
 22 building?
 23 A. The plans don't show any dates.
 24 Q. Were there any delays encountered at
 25 anytime in constructing this building?

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1 Kanevsky
 2 We'll move on, sir.
 3 There were no delays in building this
 4 building; is that fair to say?
 5 A. I would say this building was built by
 6 the schedule related and based on that
 7 financing, and other engineering,
 8 architectural questions, there is no delay on
 9 the building because I have no engineering or
 10 construction problem.
 11 Q. My question is, was this building
 12 delayed in its construction in anyway?
 13 A. I don't understand your question.
 14 Q. Let me rephrase it.
 15 At the beginning of this project you
 16 were the construction manager right from the
 17 beginning?
 18 A. Yes.
 19 Q. Is it fair to say that in your mind as
 20 the construction manager it was planned to
 21 take four years to construct this building?
 22 A. No.
 23 Q. How long was it to take in your mind
 24 to construct this building?
 25 A. Two to three years.

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1 Kanevsky
 2 A. The speed of the construction depends
 3 on the construction site only for one thing,
 4 money, financing. That's all.
 5 Q. Was there an issue with financing on
 6 this project?
 7 A. There is no issue. I'm not going to
 8 discuss any financial issues. No way, no
 9 how.
 10 Q. Let me see if I'm understanding your
 11 testimony. Your testimony is that you refuse
 12 to discuss any financing on this property; is
 13 that correct?
 14 A. I'm here to discuss the construction,
 15 not the financing.
 16 Q. So, you're defining the types of
 17 questions and the areas I can go into; is
 18 that correct, sir?
 19 MR. SCHOENE: Objection.
 20 Q. Are there other areas that I cannot
 21 ask you about?
 22 A. My privacy, and my financial stuff is
 23 privacy.
 24 Q. I want to know what my limits are in
 25 asking you questions at this deposition, sir.

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1 Kanevsky
 2 Q. Is the building completed?
 3 A. Yes.
 4 Q. How long did it take to complete the
 5 building?
 6 A. Four years.
 7 Q. What was the reason it took four
 8 years?
 9 A. My mistake in calculating the time.
 10 Q. Your calculation was wrong?
 11 A. My calculation was wrong.
 12 Q. It's not because there were any
 13 problems of any type in building this
 14 building, but you simply didn't calculate
 15 that the normal construction rate would be
 16 four years; is that fair to say?
 17 A. Ask me again, please.
 18 Q. It seems to me that you're saying to
 19 me that the problem here was not in building
 20 the building, but the problem was that you as
 21 the construction manager miscalculated how
 22 long it would take, meaning you thought it
 23 should have taken three years, but you simply
 24 miscalculated, and it should have taken four
 25 years; is that fair to say?

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Kanevsky

1
2 A. Yes.
3 Q. Sir, let me ask you this.
4 Were any underground water or streams
5 found on-site?
6 A. Yes.
7 Q. When was the first time that water was
8 found on-site?
9 A. When we actually dig and we reach the
10 water.
11 Q. When did that happen?
12 A. I believe it was the end of 2004 or
13 beginning of 2005. Something like that.
14 Q. What entity was doing the actual
15 excavation of the dirt?
16 A. What entity? ATY.
17 Q. ATY? Okay.
18 What happened? Was it a matter of
19 just digging dirt and water just started to
20 appear?
21 A. Yes.
22 Q. Did you see the water?
23 A. Yes.
24 Q. Where was the water coming from?
25 A. Just underground water.

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Kanevsky

1
2 Q. What were the problems?
3 A. We had to stop doing excavation.
4 Q. Why?
5 A. Because nobody do the excavation
6 underwater.
7 Q. How long was the excavation stopped?
8 A. I wouldn't say we stopped excavation
9 completely. We stopped excavating lower than
10 the water level. We still continued to do
11 the excavation.
12 Q. Once you saw the water did there come
13 a time subsequent to that, after that, where
14 you had to excavate lower?
15 A. Lower than what?
16 Q. Lower than the level where it wasn't a
17 problem to excavate knowing that there was
18 water beneath.
19 A. We never excavate underwater.
20 Q. So, is it fair to say that once you
21 saw the water that was the lowest level that
22 you excavated?
23 A. No. I didn't say so.
24 Q. Once you saw the water did that cause
25 any delays in the excavation?

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Kanevsky

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2 Q. Was it a lot of water or small amount
3 of water or something in the middle?
4 A. I don't know what you mean by small
5 amount or high amount.
6 Q. A large amount of water would be like
7 a stream or a river. Was it something like
8 that?
9 A. It's underground. I can't see it.
10 Q. Oh, it was underground?
11 A. It was still underground.
12 Q. How did you know you hit water?
13 A. I see a little bit of the water.
14 Q. So, in other words, excavation was
15 going and some water started to appear on top
16 of the excavation?
17 A. Yes.
18 Q. Was it a small amount of water?
19 A. What we're able to see when it
20 appears, it was a small amount of water
21 because we didn't dig deep. We didn't have
22 the chance to dig deep on that one.
23 Q. Did the appearance of the water create
24 any problems in doing the excavation?
25 A. Oh, sure.

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Kanevsky

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2 A. It didn't cause delay in excavation.
3 Q. No delays at all?
4 A. No delay in excavation.
5 Q. No delay in excavation?
6 A. No.
7 Q. How did you deal with the fact from an
8 excavation standpoint now that you knew that
9 there was underground water? What did you do
10 about that?
11 A. I simply called the engineer, and he
12 was waiting for the new part, the additional
13 part of the project.
14 Q. The new part, additional part of the
15 project, what does that mean? A new plan for
16 excavation?
17 A. Yes, and underpinning and shoring used
18 to be part of those plans.
19 Q. I'm confused, but I have been confused
20 a large part of my life. So, let's do it
21 this way.
22 Could you do a cross sectional looking
23 that way instead of from above diagram of
24 where -- not where. Once the water
25 appeared -- maybe you can just do it in

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Kanevsky

testimony. Once the water appeared did you excavate below that level of the ground?

A. Yes.

Q. How much time was it between the time you first saw the water until the time you excavated below that level where the water appeared? How much time passed?

A. Six months. Maybe eight months. Something like that.

Q. Why was there that delay of six to eight months before you started excavating below where the water appeared?

A. We were waiting for the change of plan.

Q. Was there a change of plan that needed to be drafted by a professional engineer to deal with the fact that there was water?

A. Sure.

Q. Maybe you didn't understand before.

That's what I was asking you.

Describe to me what the change was.

What had to be done by the PE to take into account that there was underground water?

A. We used to have an elevator pit. We

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Kanevsky

used to have one elevator in the building in the original project. The elevator pit from that elevator used to be under the water.

So, the change was planned. Now we have in the building two elevators. One goes from the first floor up, another one to the basement, to the first floor. So, the change to the plan was do not dig lower.

Q. Lower?

A. Lower than it used to be on the first one.

The change to the plan was we added a second elevator in order to avoid digging deeper, and we were waiting for those changes.

Q. Any other changes that came about along the similar lines of what you just described? In other words, because of water that was found, were there any other changes put in place aside from the additional elevator?

A. It's not only elevator. These changes involved change of a layout of the first floor, change of a layout of the basement,

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Kanevsky

foundation, grade beams. A lot of different changes.

Q. How was the foundation changed as a result of finding water?

A. Just configuration of the grade beams. They just lay in different places.

Q. Why did that have to be changed? Was it to avoid the water?

A. No. To accommodate the new layout.

Q. The new layout was based upon the fact that there was water underground?

A. The new layout was based on the fact that in order to avoid digging underwater we had to eliminate elevator pit and build the second one.

Q. Is it fair to say that once you found the water that the depth of excavation that was originally planned was changed so that you did not dig as ultimately planned?

A. Say again, please.

Q. Once the water was found was one of the big changes that were made that the professional engineer determined that the building could be constructed where you

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Kanevsky

didn't have to excavate the dirt as deep as originally planned?

A. Yes.

Q. Do you recall or do you know how deep the excavation below grade was originally suppose to be? Is that the right way to think of it?

A. The only change is the digging for the elevator pit, which was eliminated from the project. The rest of the project stayed the same.

Q. Stayed the same as far as how deep the excavation would go?

A. Yes.

Q. Do you recall how deep the excavation was planned to go below grade?

A. I don't remember the number. What we have right now is what was originally dug.

Q. If we looked at the plans, we would find that out?

A. Yes.

Q. Being the one who was making sure no problems arose with the underpinning, did you ever have to intervene with regard to any

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other aspect of the underpinning? You mentioned the dry pack. Were there any other problems that you ever encountered, that you saw that you had to intervene to prevent a major problem with the underpinning?

A. No.

Q. I'll ask you the same question with regard to the foundation work.

Were there any major issues that came up while you were overseeing the foundation work that you had to intervene to prevent the construction foundation from turning into a major problem?

A. Yes, this.

Q. You are pointing to Plaintiff's Exhibit 2, and say what you were about to say.

A. That was the problem.

Q. When you say that was the problem, you're referring to what you testified to earlier when there was an existing foundation and you changed the plans?

A. Yes.

Q. Anything else with regard to the

Kanevsky

construction of the foundation of the building adjacent to 97 Quentin Road where you had to intervene before the construction of the foundation turned into a major problem?

A. Nothing major.

Q. Anything with regard to the excavation, aside from what you testified to, where you had to intervene before the excavation turned into a major problem?

A. Excuse me?

Q. When the excavation was going on, when they were digging out the dirt, did you see anything as the guy who was there on the job everyday that could have been turned into a major problem but for you intervening and you saying you're doing it wrong, did anything come up?

A. No, nothing major.

Q. Were there any violations issued on this job by the New York City Department of Buildings?

A. Yes.

Q. How many?

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A. I don't remember.

Q. Did you have to make any court appearances with regard to the violations?

A. Not me.

Q. Who did, if anyone?

A. I'm not sure if there was any, but if so, my expediter.

Q. Who was your expediter?

A. At different times we have different people, but I'm not sure on this job who it was.

Q. Let me ask you that question.

Did you employ any expediters to do any work on the project?

A. I think so. Yes.

Q. Who did you employ?

A. The name?

Q. Yes.

A. Colleen Morris.

Q. M-O-R-R-I-S?

A. I'm not sure.

Q. Is that a person or entity?

A. I believe it's a person.

Q. What's the location of Colleen Morris?

Kanevsky

A. She'll go to any borough.

Q. Where is her office? Where is she based?

A. I believe she works from the home office.

Q. The home office?

A. Yes.

Q. Your home office?

A. Her home.

Q. She worked out of her home?

A. Yes.

Q. Did you employ any other expediters aside from her?

A. I don't remember. I don't think so.

Q. Do you know if the Department of Buildings or the Environmental Protection Board ever found that the violations that were issued were in fact correctly issued; in other words, that there were legitimate violations? Do you know?

A. I would say any of those violations mean to me the same as a parking ticket.

Nothing major.

MR. NEWMAN: I move to strike

Kanevsky

the answer as not responsive.

Q. Let me ask it again.

You testified that there were violations that were issued, and I'm asking you do you know if the Department of Buildings or the Environmental Protection Board ever found at a hearing that those violations were legitimate?

A. I don't recall any particular violations. So, I would say no.

Q. Now, did you ever get the chance to inspect prior to demolition adjacent to 97 Quentin Road the interior of 97 Quentin Road?

A. No.

Q. Did you ever inspect the interior of 97 Quentin Road?

A. Yes.

Q. When?

A. Probably 2006 or late 2005. Something like that.

Q. Did you inspect the interior of 97 Quentin Road alone or with somebody else?

A. With somebody else.

Q. Who else?

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looking for work?

A. Yes.

Q. Did you offer him work?

A. I told him when the time came, why not.

Q. Besides for that, besides for the super asking you for work, did he ask you to come and look inside 97 Quentin Road or did you initiate that inspection?

A. Ask me again.

Q. The first time you met the super at 97 Quentin Road you said he met you on the job site and asked you basically for work; is that correct?

A. Yes.

Q. Did something else happen in that initial interaction between you and the super that led you to inspect the interior of 97 Quentin Road?

A. Yes. I found that through the foundation wall you can see outside through the cracks, and I asked him what kind of crack is that? How long is that crack there?

Q. I appreciate what you're saying, and I

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A. I believe the person was a super at that building.

Q. How did you get entry to 97 Quentin Road in the time that you're describing?

A. He invited me.

Q. Did you get in contact with him, or how did you get to know who the super was?

A. He simply catch me on the job site and asked me to take a look at something.

Q. So, the super approached you?

A. Yes.

Q. The super of 97 Quentin Road approached you and asked you to look at something. What did he say to you when he approached you at the job site?

A. He brought me to the basement. So, I had a chance to look at the basement, but the super at that time used to work as a finish guy on doors. He used to paint the doors, and he had showed me his job and he offered me his help. He asked me to do the job on the project.

Q. He approached you on the job site, the super for 97 Quentin Road, because he was

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read that in documents, but I'm asking a different question.

I'm simply asking you, you had this initial meeting. At the first meeting with this guy -- what was the super's name? Do you recall?

A. I don't recall.

Q. What did he look like?

A. Old guy.

Q. Tall or short?

A. Not tall. Not short.

Q. Medium size?

A. Medium size.

Q. 5'6, 5'8?

A. Probably.

Q. Fat or skinny?

A. He's not fat definitely.

Q. Skinny man?

A. I would say so.

Q. Was he white, black, Hispanic or something else?

A. White. I would say white.

Q. I'm trying to reconstruct this. He said hey, I do this kind of work. Can you

Kanevsky

give me work, and then after that, did he say anything else to you?

A. We met afterwards.

Q. I'm not saying did you meet afterwards.

In that initial meeting did you say anything to him or did he say anything to you after that initial discussion of he, the super, getting work on the job? Was anything else discussed?

A. No. We have a simple meeting. We just spoke about anything. Anything.

Q. Let me ask it a different way.

You just testified that he, the super, approached you and said can I get some work on the job. Did you and him discuss anything else other than his desire for employment in that initial meeting with the super?

A. Yes.

Q. What did you speak about?

A. I tried to explain. I stay in the basement, and while we had the conversation right next to me through the wall, foundation wall, I saw the outside air, the bright

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explained to me he's doing the finishing.

So, he invites me.

Q. He invited you to come into the building?

A. Come look at his work.

Q. Was his work in the interior of the building?

A. Yes. His shop was in the basement.

Q. That's how you got to the basement?

A. Absolutely.

Q. Did you look at the doors that he worked on?

A. Yes.

Q. Once you were looking at the doors you saw a crack?

A. Yes.

Q. Where did you see that crack in the basement?

A. Here.

MR. NEWMAN: The witness is indicated --

A. There's a lot of cracks over there like this, but that particular one, I believe it was approximately here.

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light, and I ask him what kind of crack is that? How long has that crack been there? He told me that he found out that there is sun since we do the demolition. Prior to demolition probably the crack was closed by the other structure.

Q. Here's my question. I'm simply trying to find out how it came about that you got to be in the interior of 97 Quentin Road. Did you ask to be in the inside of the building, did the super invite you or something else?

MR. SCHOENE: Note my objection.

That makes it sound like he was not responsive to the previous question, which he was.

MR. NEWMAN: I will rephrase it.

Q. Sir, how did it come to be that you ended up in the interior of 97 Quentin Road? Were you invited in or did you ask to come in?

A. I'm standing right outside of the property doing my work. This guy simply stops his truck with the doors, and I asked him what are you doing with those doors? He

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MR. NEWMAN: The witness is

pointing to the middle of the longer wall on Plaintiff's Exhibit 2.

MR. SCHOENE: His finger was going back and forth to show that he didn't know exactly where it was.

MR. NEWMAN: Let the record reflect that the finger was going along the full length of the longest wall of 97 Quentin Road so we're perfectly accurate as to what happened a second ago.

Q. Was that the first time you were in the basement of 97 Quentin Road that you just described?

A. Yes.

Q. When was that?

A. I don't know.

Q. What year?

MR. SCHOENE: I think he already said late 2005 or early 2006.

MR. NEWMAN: Sorry. I'll move on.

Q. Did you have a camera with you the

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1 first time you were in the basement?

2 A. No.

3 Q. How long were you in the basement?

4 A. 10 minutes, 15 minutes.

5 Q. Was there a light on in the basement?

6 A. No.

7 Q. How did you see in the basement?

8 A. He used a flashlight, and later on in

9 particular he said he was able to show me

10 with the pigtail lights.

11 Q. So, he was able to turn on a light

12 later?

13 A. He screwed the light or turned on the

14 light.

15 Q. It was a flashlight and an overhead

16 light used to see?

17 A. On the stairs, yes.

18 Q. Aside from these cracks that you saw,

19 did you observe anything else in the

20 basement?

21 A. In that moment only what I saw is the

22 crack. I didn't have a chance to walk all

23 around the basement.

24 Q. Did you take any photographs that day?

25

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1 complaining?

2 A. He stopped by. He explained to me all

3 his complaints.

4 Q. What's the owner's name?

5 A. I don't know.

6 Q. When was the first time the owner

7 complained to you?

8 A. He wasn't actually complaining. He

9 had concerns. I would say he had concerns.

10 Q. What were the concerns of the owner?

11 A. Same, cracks.

12 Q. Cracks in the basement?

13 A. Yes.

14 Q. What exactly in expressing his

15 concerns to you did the owner say to you?

16 A. He saw the cracks.

17 Q. He said I saw cracks in the basement?

18 A. Yes.

19 Q. Did he say anything else to you?

20 A. Anything else?

21 Q. Yes.

22 A. Yes. He said I see the cracks, and I

23 have a concern about those cracks.

24 Q. What did you say?

25

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1 A. At that time, no.

2 Q. When was the next time you were in the

3 interior of 97 Quentin Road?

4 A. I was in there a few times. I can't

5 recall exactly.

6 Q. About how many times were you in the

7 interior of the building?

8 A. Two, three, four.

9 Q. How did you get in on the other times?

10 Was the super always letting you in or

11 something else?

12 A. I believe another time again with the

13 super, and another time the owner of the

14 building.

15 Q. What was the purpose of going into 97

16 Quentin Road after your initial visit? What

17 was the purpose? Why did you visit the

18 interior of 97 Quentin Road after the first

19 time?

20 A. Okay. He probably asked me about

21 complaints of the work.

22 Q. The owner complained?

23 A. Yes.

24 Q. How did you hear that the owner was

25

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1 A. I explained to him my opinion how

2 those cracks could appear, and I also offered

3 to him when we finish our work to fix

4 anything in the building. Same thing that we

5 offer all other neighbors who were around the

6 property, and we kept our word.

7 Q. That's excellent.

8 MR. SCHOENE: There was no

9 reason for that.

10 MR. HERMAN: It was a comment.

11 I'm not allowed to make a comment?

12 MR. SCHOENE: No.

13 MR. HERMAN: Strike the comment.

14 It's not allowed at the deposition.

15 Q. You said you had an explanation for

16 the cracks. What was the explanation that

17 you gave?

18 A. From my point of view that building

19 used to have very poor maintenance.

20 Q. Poor maintenance. Okay.

21 A. Not poor maintenance. Very poor

22 maintenance, first of all, and the second,

23 very poor quality of building. For example,

24 in the same cracks that we're talking about

25

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you were not able to see any reinforcement bars. That means the foundation wall had to be poured without reinforcement bars.

Q. It's your testimony that there are no reinforcement bars in the foundation wall?

A. In his foundation?

Q. Yes.

A. There's no reinforcement bars visible in his wall. Not inside the crack. Not even were reinforced bars not installed, but the outside of the foundation is supposed to be marked through support of the bars, reinforcement bars. So, there's no visible marks -- let me explain. Let me rephrase.

Q. Please do.

A. In order to install the foundation there's a support bar. You have to install horizontally some type of support, and that support is suppose to go through the wall completely and suppose to sit right on the forms. So, when you open the forms, those supports are suppose to stick out from the concrete. There is no visible marks of those supports. So, I assume there is no

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So, I'm asking is that your testimony, that one of the problems as far as poor maintenance is that the roof was a leaky roof? Is that your testimony?

A. You asked me two different questions. The question regarding the concrete foundation wall, I answered that question.

Q. Yes.

A. Regarding the poor maintenance which could get any cracks inside the building, that's the water leakage.

Q. So, when you observed the roof, you saw that it was a leaky roof?

A. All over.

Q. All over.

Now, did you inspect the roof prior to the demolition?

A. No.

Q. Did you inspect the roof prior to the excavation?

A. No.

Q. Did you inspect the roof prior to construction of the steel?

A. No.

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reinforcement bars in this foundation.

Q. Was it your assumption then in that, from your perspective there doesn't appear to be reinforcement bars that's the cause of any cracks that appear in the foundation of 97 Quentin Road?

A. Oh, sure.

Q. When you refer to the fact that there was either poor maintenance or no maintenance, what is that based on?

A. Very simple. When we're together with you inspecting the roof, I point to you exactly a lot of places on the roof where water penetrate from the roof, and everybody knows the leaking of water from the roof could bring down the whole building, not only cracks.

Q. So, in other words --

A. Especially if it's a wood structure.

Q. When you looked around the structure, you saw that there were leaks or a poorly maintained roof; is that your testimony?

A. You saw that. The leaks was all over.

Q. Right.

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Q. Did there come a time that you erected scaffolding on the roof of 97 Quentin Road?

A. Say it again.

Q. Did there come a time that you or your company or somebody erected scaffolding on the roof of 97 Quentin Road?

A. Yes.

Q. When was that?

A. A year ago, year and a half ago. Something like that.

Q. Did you obtain the permission --

A. Two years ago.

Q. Did you obtain the permission of 97 Quentin Road before you erected scaffolding on the roof of 97 Quentin Road?

MR. SCHOENE: The last question was you or someone else, and now you're saying you.

MR. NEMAN: Let me clarify it.

Q. Did you obtain the permission of the owner of 97 Quentin Road before you constructed scaffolding on the roof of 97 Quentin Road?

MR. SCHOENE: Objection.

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There's been no testimony that he constructed any scaffolding on the roof of 97 Quentin Road.

Q. Who erected scaffolding on the roof of 97 Quentin Road?

A. O.M.I.

Q. Who hired O.M.I.?

A. Me.

Q. When?

A. 2004.

Q. Did O.M.I. ever obtain the permission from the owner of 97 Quentin Road before they erected scaffolding on the roof?

A. Yes.

Q. They did?

A. Yes. That's how we met.

Q. Prior to us meeting in court, did O.M.I. obtain the permission of the owner of 97 Quentin Road before erecting scaffolding on the roof of 97 Quentin Road?

Do you understand my question, because I'll simplify it?

A. Simplify it.

Q. I know you and I met. We met in

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not build the scaffolding on the roof?

A. First of all, the owner never said no. Second, I don't remember when we ever build a scaffolding on the roof before we get the permission.

Q. I will ask it a different way.

Prior to the scaffolding being constructed on the roof of 97 Quentin Road, did Bill Aftousmis, the owner of 97 Quentin Road, ever give permission to O.M.I. to construct that scaffolding on the roof prior to the court date?

A. I don't remember any scaffolding built on the roof prior to getting permission. What scaffolding are you talking about?

Q. Scaffolding built on the roof of 97 Quentin Road to construct bricks on the steel scaffolding.

MR. SCHOENE: Construct bricks?

MR. NEWMAN: To install bricks.

A. I don't know what you're talking about.

Q. Okay. I'll show you photographs later. It's not a problem.

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Brooklyn Supreme Court, and we got a settlement agreement where certain monies were paid for that scaffolding that was erected on the roof, correct?

A. Yes.

Q. Prior to there being a court action about the scaffolding, did O.M.I. approach the owner of 97 Quentin Road to ask for permission to put scaffolding on the roof?

A. Yes. Sure.

Q. Prior to the court date?

A. Sure.

Q. When was that?

A. I don't remember the date, but we talk to the owner a lot of times. Not a lot of times, but a few times.

Q. What did the owner say?

A. What did the owner say? I believe he didn't say anything.

Q. Did the owner give O.M.I. permission to build a scaffolding on the roof?

A. I don't think so.

Q. So, did O.M.I. build the scaffolding on the roof after the owner said they could

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A. Oh, you're talking about on the first floor? That's what you're talking about?

Q. I think this might help. Then we'll move on.

There is scaffolding here, right, to put the bricks, and there was scaffolding on that piece as well, correct?

A. On this building appears two levels of the roof.

Q. I know that.

A. One is the three stories, and another one is the one story. Very, very small.

Q. Yes, sir.

A. There's no scaffolding on that roof. Over that roof, but not on the roof. Yeah, we did use a space over there, but we didn't put scaffolding on the roof actually. We used the parapet for that.

Q. You used the parapet of the building?

A. Yes.

Q. Of Bill Aftousmis' building?

A. But not on the roof. The size of the roof is this big.

Q. I'll ask it this way, and then we're

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going to move on.

Did there come a time that you built scaffolding on the parapet of Bill Aftousmis' building?

A. Excuse me?

Q. Did there come a time when O.M.I. constructed scaffolding on the parapet of Bill Aftousmis' building at 97 Quentin Road?

A. On that portion?

Q. Yes.

The parapet, the ledge, did O.M.I. ever construct scaffolding there?

A. Yes.

Q. When did they do that?

A. A few years ago. Two years ago.

Q. Did O.M.I. ever receive permission from Bill Aftousmis to construct scaffolding on the parapet of 97 Quentin Road?

A. I don't know.

Q. Isn't it a fact, sir, that there was another set of scaffolding that was built on the roof of 97 Quentin Road, on the actual roof? Didn't that occur at some point?

A. That was not scaffolding.

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it's virgin soil which is able to support the foundation wall. The other part of the structure, it takes all the load from the building and transfers it to the soil.

Q. Is the footing important in maintaining the structural integrity of a building?

A. Is the footing --

Q. Important.

A. Yes. Very important.

Q. Why is it very important?

A. I just explained it, because it collects and transfers all the weight of the building.

Q. In doing the construction and excavation next to 97 Quentin Road was there a time that the footing that formed part of the structure of 97 Quentin Road was cut?

A. Footing?

Q. Footing. Was it cut?

A. Footing was cut? I would say no.

Q. So, no footing belonging to 97 Quentin Road was ever cut or altered in anyway; is that correct?

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Q. What was it? What do you call it?

A. That was -- how you call it -- like a safety bridge. That was not used for the erection of the brick or something else.

That was used to prevent if something falls.

Q. Was there a structure that was built on the roof of Bill Aftousmis' building at 97 Quentin Road that was constructed so as to allow brick to be installed in the adjacent building?

A. Again, please.

Q. Was there some sort of structure that was constructed on the roof of Bill Aftousmis' building that would allow workmen to mount that structure so that they could install brick in the adjacent structure?

A. After we had the permission, yes.

Q. But not before?

A. Not before.

Q. Do you know what a footing is?

A. Yes.

Q. What is a footing?

A. A footing is a part of the foundation that lays directly on the soil. Hopefully

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A. Yes.

Q. If you can explain, I'll be happy for you to explain.

A. Should I?

Q. Yes. That's what you're here to do.

A. The proper way to install the footing is complete forms in the ground and laying the concrete. So, in this case you're able to control the dimensions of the footing. In that particular building no one used the form and they poured the concrete directly into the ground.

Q. By that particular building you're referring to 97 Quentin Road?

A. Yes. They used to pour the concrete directly in the ground. So, the footing itself, the shape of the footing, was not straight, and partially it was sitting on our property. That portion was nicely cut off.

Q. I see.

So, in other words, the footing that was part of the structure of 97 Quentin Road -- go ahead. Correct me.

A. It was not part of the structure.

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1 Kanevsky

2 Q. Explain.

3 A. The part of the structure is exactly

4 as much as you need under the wall. Whatever

5 sticks out is not a structure anymore.

6 Q. Just so I understand your distinction,

7 is it fair to say that it was during the

8 excavation that you discovered this sticking

9 out of the footing?

10 A. During the underpinning. Even prior

11 to excavation.

12 Q. During the underpinning did you

13 observe that there was a piece of the footing

14 extending out into the area that was to be

15 the area where the new building was

16 constructed?

17 A. I would say I observed pieces of the

18 foundation -- not the foundation -- pieces of

19 the concrete related to the building sticking

20 out of the property line.

21 Q. Out of the property line?

22 A. Yes.

23 Q. Do you recall the first time you

24 observed that? Do you recall the first time

25 you observed that footing sticking out of the

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1 Kanevsky

2 A. He measured the width and the

3 thickness of the footing in other places

4 where those pieces of the concrete is not

5 sticking out, and they simply decide that

6 whatever we cut off is not related to the

7 building, and this is standard procedure. It

8 happens all over.

9 Q. Who made the decision to cut off that

10 structure that was jutting out? Who made

11 that decision?

12 A. No one is suppose to make a decision

13 about that. It's standard procedure.

14 Everybody does it. If you catch this

15 problem, that's what you have to do. It's by

16 the book.

17 Q. Once you caught the problem did you

18 say something to somebody about getting rid

19 of that structure that was sticking out?

20 A. I would say everybody involved in this

21 project knew about it.

22 Q. They knew about it?

23 A. Yes, and this is just nothing. It's

24 just standard.

25 Q. So, once they all knew about it what

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1 Kanevsky

2 property line? When was the first time you

3 saw that?

4 A. In the very beginning.

5 Q. What year?

6 A. 2004.

7 Q. Did you do anything once you observed

8 that?

9 A. No, I did not.

10 Q. Did you speak to any professional

11 engineer about that, about this footing

12 sticking out over the property line?

13 A. Yes, I did.

14 Q. Who did you speak to?

15 A. Aislem Amer.

16 Q. What did you say to him?

17 A. I just showed him.

18 Q. Did you take any pictures of that

19 structure?

20 A. Probably, yes, but this is standard

21 procedure. This is nothing new.

22 Q. What did he say to you when there was

23 a structure sticking out from Mr. Aftousmis'

24 building onto your property line? What did

25 he say to you?

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1 Kanevsky

2 happened next? How was it put into play that

3 that piece was cut?

4 A. Very simple. With chain saw. With

5 sledge hammer. Very simple.

6 Q. Did you watch that piece of the

7 structure being cut?

8 A. It was a few of them. Some of them

9 really small. Some of them a little bit

10 bigger.

11 Q. Did you watch --

12 A. I watched.

13 Q. How long did it take; an hour, half a

14 day, to cut them?

15 A. That was performed at different times.

16 Altogether I don't know how much it takes.

17 For example, one day we were working in this

18 area and maybe it took half hour. Another

19 day two hours. Another piece, maybe it took

20 us two or three days.

21 Q. How many pieces did you cut off that

22 were adjoining into your property?

23 A. I don't remember.

24 Q. Was it 20, 10?

25 A. What do you mean by pieces? What

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should I consider a piece, like this big or the table size? What do you consider a piece?

Q. I'll move on. It's okay.

MR. NEWMAN: Can you mark this?

(Whereupon a document entitled

Affidavit dated 7/31/07 was marked

Plaintiff's Exhibit 3, for

identification as of this date.)

Q. You testified that from your perspective there was poor maintenance because water was coming in and the building wasn't constructed properly because the steel reinforcement wasn't there. Was there anything else about the construction of this building that you believe caused cracks to form in the building at 97 Quentin Road?

A. Yes, I do.

Q. What was that?

A. There is two main issues in that building. First of all, the appearance of the laundromat. In order to install those laundromats in the building they used to build piles in order to support the concrete

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slab. I believe it's 18 inches thick to support all the machines, and those piles used to penetrate existing all concrete slab in the building in order to build all those piles, same footings. So, the crack that we observed in the basement goes right along those piles.

Q. Anything else about the construction of the building?

A. Yes.

Q. What is that?

A. That slab is not structural anyway, but it's just those cracks in the slab just simply show the interruption of the foundation that used to be done when those piles were used to be built. Second, in that building they have a water collector which they used as a filter for used water from the laundromat machine, and that water prior to going to the City sewer goes to the concrete pit in the basement, which I believe has the same cracks as the slab. So, the water penetration, permanent water penetration from that water collector also could damage the

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foundation.

Q. Is that the reason why there are cracks in the cement basement slab?

A. We can only assume.

Q. Assume.

A. Yes.

Q. Was there any notice given to Bill Aftousmis prior to the excavation and underpinning that that was going to occur?

A. No, and I know we don't have to. We have to notify all the neighbors only about demolition, and that was done.

Q. So, you know of no Department of Buildings code regulation that you do have to notify adjoining landowners if there's underpinning? You don't know about that?

A. I know that nobody is able to prevent us to build our building on our own property, and if engineers decide to do the underpinning, no one is able to stop us to do it. That's what I know.

Q. So, in other words, if you want to go ahead and do your underpinning, no one can stop you; is that your testimony?

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A. No one can stop you. I'm definitely able to pull the permits from the Buildings Department on the neighbor's property even without his permission.

Q. Even without notification?

A. Even without notification.

Q. So, you can do whatever you want?

A. Not whatever I want to do. Whatever the Buildings Department allowed me to do.

Q. The Buildings Department allowed you to do the excavation without any notification to Bill Aftousmis at 97 Quentin Road about underpinning; is that correct?

A. As far as I know, yes.

Q. Was there anything about the actual washing machines, the vibration of the machines, that caused damage to Bill Aftousmis' building? Do you know about that?

A. I was in that building. You used to stand on the floor and you feel the vibration. If you feel the vibration, you think the world doesn't feel it?

Q. What is your testimony?

A. My testimony is that if there is

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vibration that you feel in the building, it spreads all over the building and may affect any structure in the building, below the machine or on top of them.

Q. Did there come a time when the New York City, Department of Buildings sent a licensed professional engineer to test the underpinning, to test and evaluate the underpinning work?

A. The Buildings Department sends the engineer?

Q. Did they ever do that?

A. I don't remember that.

Q. Did that ever happen?

A. Unless it happened without me knowing. I didn't have any appointments with them. No one called me. No one send me a letter. If they sneaked on the property, maybe.

Q. Let me ask you this.

Have you supervised underpinning work before?

A. Sure.

Q. How many times?

A. A lot.

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seen this document before?

A. I did not.

Q. I'm going to show you a couple of pictures.

MR. NEWMAN: The title is Cellar and Party Wall Condition Inspection Report dated May 19th of 2005. The name of the PE that prepared that report is Wiklor Wasilewski.

Q. On Page 4 of six pages there are two photographs. I'm going to point your attention to Photograph Number 1, which says diagonal crack in the south wall. Do you see that photograph?

A. Okay.

Q. Have you ever seen that crack prior to today looking at that photograph?

A. I don't remember. I told you there were a lot of cracks.

Q. Now, there's a crack on Photo Number 2. It shows a crack on the cement slab.

A. Yes.

Q. Have you ever seen that crack in the basement?

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Q. 100 times?

A. No, not 100.

Q. 50?

A. 20, 30 times.

Q. In those 20 to 30 times have you ever seen a New York City, Department of Buildings professional engineer come out and test and inspect the underpinning?

A. Yes, once.

Q. One time?

A. It was government project paid by the City, and in those cases the Buildings Department's engineers are always on the job site. So, they inspect the underpinning. Any City job works this way.

MR. NEWMAN: Let's have this marked as Plaintiff's Exhibit 4.

(Whereupon a document entitled Cellar and Party Wall Condition Inspection Report dated 5/19/05 was marked Plaintiff's Exhibit 4, for identification as of this date.)

Q. Sir, I'm showing you Plaintiff's Exhibit 4, and I'll ask you if you have ever

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A. Yes. This is the piles that I used to talk about, and this is the crack along the piles.

Q. When was the first time you saw that crack on the cement slab as depicted in Photo Number 2?

A. I don't remember. It was much earlier than the first time I went in the basement with the owner. I'm sure I saw it before. I didn't inspect the basement, but I'm sure I saw this.

Q. Before you were in the basement with Bill Aftousmis?

A. With Bill Aftousmis. I used to be in the basement before Bill Aftousmis a few times, one or two times. I definitely saw this crack before.

Q. Did you ever put any crack monitors down on any part of Bill Aftousmis' building?

A. Yes, from my side.

Q. Why did you do that?

A. Because when they point me to the cracks, I had to monitor the cracks. In this case I was able to assess those cracks were

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movable, still movable. So, it belongs to any activities, or are they stable. That means they not belong to any activity as excavation and underpinning. So, I monitored those cracks, and I do have a picture of those monitors.

Q. What did the crack monitors show?

A. They didn't move they showed.

Q. Where did you put the crack monitors?

A. On a few places on this wall.

Q. How many?

A. There was a few of them.

Q. Did you do any monitoring of Bill Aftousmis' building during the excavation?

A. Yes, I do.

Q. What kind of monitoring did you do during the excavation?

A. Okay. During when I hammered the piles, and the piles went on this line --

Q. Yes.

A. -- I hired a company that monitored the vibration of the ground.

Q. What was the name of the company?

A. I don't remember. It's in my records.

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Kanevsky

monitor moving concrete, stress, steel erection, fireproofing. Everything. Everything of what we're suppose to monitor by the Buildings Department and technical responsibility of the engineers on this job.

Q. When you say monitoring, what were they doing?

A. They're supposed to be on the job site exactly at the time when they're able to check the progress and make a report of it.

Q. Was it mostly in terms of vibration monitoring?

A. Everything. Each stage of the construction from the very beginning to the very end.

Q. Did this company do vibration monitoring when the excavation was done?

A. There is no vibration from the excavation.

Q. Were there any vibrations that are created when doing the underpinning?

A. No.

Q. Okay.

Were there piles put in adjacent to 97

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Kanevsky

On this property we worked with many. I

don't remember the name. It's in my file.

Q. All right. We'll get it eventually.

Was there only that company or were there other companies that did monitoring during the construction next to 97 Quentin Road?

A. What do you mean by monitoring? If you're talking about vibration, you monitor vibration. If you're talking about the cracks, yes, I put the test on the cracks.

Q. What I'm referring to is nothing else, just the monitoring of the vibrations.

Was there anyone else aside from the company that you can't recall the name of, but you're recounting, was there another company?

A. That's what came up in my mind.

Q. The company that was hired to do the monitoring, were they monitoring the construction site while the underpinning was done?

A. Actually that company was monitoring all stages of construction. They used to

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Quentin Road?

A. No.

Q. I'm showing you Page 5 of 6, and I'm going to show you Photograph Number 3, but before I do that, what's the east footing wall in the diagram? Do you know what that means?

A. No.

Q. Now I'm going to show you Photograph Number 4 and ask you is this the underpinning that you were referring to in your testimony, at least a fair depiction of a portion of the underpinning?

A. What portion of the underpinning are you talking about?

Q. I'm directing your attention to Photograph Number 4, and I'll ask it this way. Do you recognize that photograph?

A. I do recognize this wall. I don't recognize this photograph. Maybe it's not mine. I can't see exactly what's in that portion of this photograph. It's too small.

MR. SCHOENE: Let the record reflect that it's actually a photocopy

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1 Kanevsky
2 of a photograph.
3 Q. In Photograph Number 4 of Plaintiff's
4 Exhibit 4 I'm directing your attention to
5 this material above these concrete blocks two
6 and three. What I'm pointing my finger at,
7 is that dry packing?
8 A. No.
9 Q. What is that material that I'm
10 pointing to?
11 A. This is old material from the old
12 wall. Maybe even from -- this photograph is
13 too small.
14 Q. In Photograph Number 4 do you see any
15 dry packing in that photograph?
16 A. Too small. Show me the original
17 picture. It might be much easier.
18 Q. Photograph Number 3, have you ever
19 seen what this depicts there? Does that look
20 familiar to you in anyway?
21 A. Oh, yeah. This is the wall of the
22 building. This is the wall that used to be
23 underground. Not even underground, because
24 the neighbor's building that was demolished
25 had a basement. So, this wall never went

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1 Kanevsky
2 wall. So, concrete simply cracks itself even
3 without any stress, and in order to prevent
4 it from cracking we use reinforcement bars.
5 Q. We're going to move on.
6 In Photograph Number 3 is there any
7 underpinning in the bottom of the photograph?
8 A. It's very difficult to say. It may be
9 right here, but to know for sure I would have
10 to see -- it seems like it's here, but I'm
11 not sure.
12 MR. NEWMAN: By here the witness
13 is referring to the bottom fifth of
14 the photograph.
15 Q. I'm going to show you Page 6 of 6, and
16 I'll direct your attention to Photograph
17 Number 6, and ask if what's depicted in that
18 photograph is familiar to you in anyway? Do
19 you recognize what is depicted in this
20 photograph?
21 A. I recognize what's in those pictures.
22 Q. Is this part of the underpinning --
23 I'm pointing to Photograph Number 6 -- that
24 was constructed under Bill Aftousmis'
25 building?

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1 Kanevsky
2 under the soil.
3 Do you have a bigger picture of this?
4 Q. Not right now. I will try to get you
5 bigger pictures.
6 MR. SCHOENE: You weren't
7 suppose to ask him any questions.
8 MR. NEWMAN: There's been a
9 reconciliation, uncommunicated, but --
10 Q. Here's my question to you.
11 There are two cracks that I can see.
12 A. I can see them too.
13 Q. My question is, those two cracks, is
14 that something that you saw prior to
15 construction beginning or something else?
16 A. Yes, I do. Those cracks I saw prior
17 to construction. If you're able to show me
18 the same picture in the actual size, on the
19 same picture I will show you why this crack
20 appears only on the foundation wall, and
21 right under the crack in the footing there is
22 no crack. It means that the footing is still
23 stable and still able to hold the building,
24 and the cracks in the foundation wall appear
25 only because there is no rebars inside of the

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1 Kanevsky
2 A. I believe this is the old concrete
3 which sticks out from the building. I don't
4 see any underpinning here.
5 Q. Photograph Number 5, do you recognize
6 what is being depicted in Photograph Number
7 5?
8 A. Yes, I do.
9 Q. What is it?
10 A. It's this part of the wall.
11 Q. Do you know if it's north or south?
12 A. No. He calls it north on Picture 5.
13 It's the north wall. This is this wall.
14 Q. I think you testified that it was, but
15 in this photograph can you tell if there's
16 any underpinning that was constructed? This
17 is Photograph Number 5.
18
19
20
21
22
23
24
25

Kanevsky

A. I can't tell on this photograph anything, but that wall used to be underpinned. We did underpin that wall, but in this photograph you can't see that.

O. I think we're going to stop here, and unfortunately we're going to have to bring you back for a second time. We'll do it at your convenience, collective convenience, but we have to do a second session because these fellows want to ask you questions. I apologize for that, but we started when we did and that's unfortunate.

(Time noted: 4:30 p.m.)

MARK KANEVSKY

Subscribed and sworn to before me
this day of 2008.

Notary Public

EXHIBITS

PLAINTIFF'S FOR IDENTIFICATION	DESCRIPTION	PAGE
1	A photograph	28
2	A diagram drawn by Mr. Kanevsky	48
3	A document entitled Affidavit dated 7/31/07	121
4	A document entitled Cellar and Party Wall Condition Inspection Report dated 5/19/05	126

C E R T I F I C A T E

I, CAROLYN PALADINO, hereby certify that the Examination Before Trial of MARK KANEVSKY was held before me on the 13th day of May, 2008; that said witness was duly sworn before the commencement of his testimony; that the testimony was taken stenographically by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Examination Before Trial of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 3 of June 2008.

Carolyn Paladino

CAROLYN PALADINO

ERRATA SHEET

PAGE/LINE

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